(33) (29)

Nos. 01-1118 & 01-1119

IN THE

Supreme Court of the United States

SEP 17

JOSEPH SCHEIDLER, *ET AL.*,
Petitioners,

v.

NATIONAL ORGANIZATION FOR WOMEN, INC., *ET AL.*,
Respondents.

OPERATION RESCUE,
Petitioner,

v.

NATIONAL ORGANIZATION FOR WOMEN, INC., *ET AL.*,
Respondents.

On Writs of Certiorari to the United States Court of Appeals for the Seventh Circuit

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QUESTIONS PRESENTED

1. Whether one who uses violence and threats of violence to induce a business and its customers to conform their use of their property to his or her demands, commits extortion under the Hobbs Act, 18 U.S.C. § 1951.

2. Whether, as a matter of inherent authority or statutory grant, the federal courts have power to enjoin ongoing racketeering violations in lawsuits brought by the victims of such racketeering activity under the Racketeer Influenced and Corrupt Organization ("RICO") Act, 18 U.S.C. §§ 1961 *et seq.*

PARTIES TO THE PROCEEDING

Petitioners are Joseph M. Scheidler; the Pro-Life Action League, Inc.; Andrew D. Scholberg; Timothy Murphy; and Operation Rescue ("OR"). Respondents include the National Organization for Women, Inc. ("NOW"), on behalf of itself and its members and on behalf of the class of women who are not NOW members and whose rights to the services of women's health centers in the United States at which abortions are performed have been or will be interfered with by Petitioners' unlawful conduct. Respondents also include the National Women's Health Organization of Summit, Inc., d/b/a/ Summit Women's Health Organization, and the National Women's Health Organization of Delaware, Inc., d/b/a/ Delaware Women's Health Organization, on behalf of themselves and the class of all women's health care centers in the United States at which abortions are provided.

RULE 29.6 STATEMENT

Respondents National Organization for Women, Inc.; National Women's Health Organization of Summit, Inc., d/b/a Summit Women's Health Organization; and National Women's Health Organization of Delaware, Inc., d/b/a Delaware Women's Health Organization, do not have any parent corporations and do not issue stock to the public.

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TABLE OF ABBREVIATIONS

JA	Joint Appendix
OR Br.	Petitioner Operation Rescue's Brief
OR Pet.	Petitioner Operation Rescue's Petition for Writ of Certiorari
OR	Petitioner Operation Rescue
PX	Respondents' Exhibits at Trial (Plaintiffs' Exhibits)
R	Record Below
RA	Appendix to Respondents' Brief
Sch. Br.	Petitioner Scheidler's Brief
Sch. Pet.	Petitioner Scheidler's Petition for Writ of Certiorari
Sch.	Petitioner Joseph Scheidler et al.
SPA	Appendix to No. 01-1118 Petition for a Writ of Certiorari of Scheidler et al.
T	Trial Transcript in the District Court

STATEMENT

After this Court's decision in *NOW* v. *Scheidler*, 510 U.S. 249 (1994)("*NOW I*"), holding that the Racketeer Influenced and Corrupt Organizations Act (RICO) has no "economic motive" requirement, Respondents, the National Organization for Women (NOW), Delaware Women's Health Organization (DWHO), and Summit Women's Health Organization (SWHO) proceeded to a seven-week trial against Petitioners in March 1998. On April 20, 1998, a unanimous jury returned a detailed verdict, with four pages of special interrogatories, finding Petitioners responsible for operating their enterprise, the Pro-Life Action Network (PLAN), through a pattern of 121 RICO predicates, including 21 Hobbs Act violations and 25 state law extortion violations. The jury awarded DWHO and SWHO damages, which were trebled under 18 U.S.C. § 1964(c). After additional evidence on the need for injunctive relief, in July 1999 the trial court granted a nationwide injunction. On October 2, 2001, the United States Court of Appeals for the Seventh Circuit affirmed in every regard.[1] The injunction has not affected peaceful protests, but has brought an end to a lengthy campaign of threats and violence intended to shut down women's health facilities that offer abortion services.

The Proof at Trial

Respondents proved that PLAN's nationwide pattern of crimes included violent assaults and physical attacks on patients, doctors, clinic staff, and police, plus destruction of medical equipment, supplies, and other clinic property, committed for the purpose of obtaining control over the property of women's health centers and their customers. Petitioners' portrait of their enterprise as an organization operated only through non-violent sit-ins and blockades (*e.g.*, OR

[1] The Rule 60(b) motions OR mentions (Br. 3 n.3) were either withdrawn by Petitioners or denied as baseless, and such denial was affirmed on appeal. *See, e.g.*, SPA 30a; R1474.

Br. 2, 4, 7) bears no relation to the proof. Abundant evidence showed that PLAN members regularly assaulted clinic personnel and patients: they beat on their cars, hit and clawed them, choked them, threw them to the ground, shoved and elbowed them, and slammed them against buildings, even as they begged to be let go because they were being crushed.[2] SPA 4a; RA 27a-29a, 31a-34a, 36a-37a; JA 111-12; T 1551, 4824-26, 4829. It was common for PLAN to apply so much force to bodies pinned against buildings that glass doors and windows were damaged or cracked from the pressure. SPA 4a; T 1445, 4824-25; PX 3B, p. 3.

Patients seeking treatment for a variety of health problems were attacked by PLAN members to keep them from their appointments. RA 31a-32a, 35a-37a; T 1914-17. One fertility patient tried desperately to get through a blockade because she was ovulating and needed insemination that day, but PLAN members grabbed her and pulled her into their midst; even with police assistance, she was unable to get into the clinic. RA 31a. At a Los Angeles clinic, PLAN members grabbed the arms and legs of an ovarian surgery patient who was due to receive post-operative treatment there. When she continued to attempt to access medical services, PLAN members pulled her hair, struck her, and beat her with an anti-abortion sign until her sutures ruptured and she passed out. SPA 2a, 4a-5a; RA 35a-37a; T 1519-20, 1522.[3]

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[2] Although Petitioners sometimes denied that their enterprise had members, they repeatedly referred to both PLAN's constituent organizations and the individuals who comprised them as "members," *e.g.*, RA 11a-12a; PX 237, p. 3, PX 801, p.18a.

[3] PLAN's crimes by force or violence proved at trial also included the following:

In Cherry Hill, New Jersey, PLAN members made human chains and violently pushed back clinic staff who were trying to keep a corridor open for their patients, causing property damage. T 4822-25; PX 1441. PLAN member grabbed the clinic administrator by the hair and threw her to the sidewalk. T 4824-26, 4829.

None of the 121 RICO predicate acts[4] found by the jury was a mere sit-in or blockade. SPA 126a, n.6; JA 145. At Petitioners' request, T 4488-90, one interrogatory, JA 145, Q6, asked the jury whether any predicate act was "based solely on blockades of clinic doors or sit-ins within the clinics, without more?" The jury answered, "No." JA 145.[5]

PLAN leaders repeatedly invaded the DWHO clinic; they destroyed medical equipment and medications, tore down cabinets, and chained themselves to operating tables; they threatened the administrator to induce her to leave her job. RA 23a-24a, 29a-30a; SPA 111a.

In Pensacola, they ransacked a clinic, destroyed medical equipment, attacked a staff member and a volunteer, slamming them against the wall and causing spinal damage to both women. RA 33a-35a, 43a-44a; T 1471-72, 4012-26.

In Wichita, after forcing a clinic to close for a week, PLAN members barricaded the entrances, surrounded and beat on patients' cars, and grabbed and bruised patients trying to pass through corridors made by federal marshals. RA 25a-28a; T 1088-89; PX 312, 413.

Similar assaults and otherwise violent conduct occurred in Atlanta, RA 37a-38a; T 1551-52; Milwaukee, SPA 111a; JA 111-12; T 1871-72, 1914; Lake Forest, Illinois, RA 44a; and elsewhere, SPA 5a, 110a; PX 513; T 1209-11; JA 113-27; RA 38a-40a, 45a.

[4] As OR points out (Br. 5 n.9), to satisfy RICO's pattern requirement Respondents introduced evidence of some 30 incidents of conduct by PLAN, giving rise to 121 violations in six categories. The predicate state and federal extortion acts overlapped because the elements were similar. Thus, most of the acts giving rise to state extortion violations also gave rise to violations of the Hobbs Act, 18 U.S.C. § 1951, or the Travel Act, 18 U.S.C. § 1952, or both; and each of the Hobbs Act violations was also the basis for a finding as to state extortion laws, *see* JA 144 Q4(d).

[5] Although the word "blockade" may imply a forcible obstruction, the parties recognized that it was possible to conduct a blockade without force or violence. T 4490-94. For example, setting a sawhorse in front of a doorway might create a blockade, but no one would argue that it would involve force, violence, or the wrongful use of fear, as required for a Hobbs Act violation. Similarly, Respondents agreed that if protesters sat or stood peacefully and passively in front of a door, without using acts or threats of force to prevent staff or patients from passing through, this would not be the wrongful use of force, violence, or fear. T 4493.

PLAN's chosen tactic was a form of forcible invasions and blockades that PLAN aptly called "blitzes," SPA 135a; RA 13a; PX 801, p. 13; T 1018, and, later, "rescues," which entailed whatever force was necessary to induce clinics to close and patients to give up their contracts for medical services. SPA 2a, 5a, 111a, 134a; JA 83; RA 13a, 42a-44a; PX 628, p. 14; T 980-01, 1006-07, 1970, 3660-61. PLAN Director Randall Terry's public definition of "rescue" made clear force was authorized:[6] "Rescue is making [a clinic] inaccessible . . . by placing our bodies around it, in it, somewhere on the premise [sic] so that [women] cannot get in . . . . Or it could include . . . our bodies and our cars, our bodies and Kryptonite locks, [or] our bodies and chains." JA 83. PLAN leaders told clinics to "close or be closed" by their "blitzes." SPA 115a; RA 17a, 19a-20a. Each of the attacks presented to the jury involved the use or threat of force or violence. T 5005; JA 145.[7] Patients with the courage and stamina to make it through PLAN's "blitzes" were typically left shaking and crying from the ordeal. T 1872-73.

PLAN was formed specifically to target medical providers across the nation, PX 140, and its leaders publicly endorsed the use of force, T 1910, and even violence, which PLAN founder and Director Scheidler declared permissible. PX 628, p.14. Scheidler praised those who violently invaded the Pensacola Ladies' Center and brutally attacked its staff for the "good job" they did terrorizing the clinic and its patients. RA 15a, 34a-35a; *see also* JA 84. He also stated that he did not consider arson and bombings to be "violence." JA 86.

[6] Terry, OR's first National Director, T 1823-24, settled with Respondents before trial and agreed to permanent injunctive relief. JA 79-82.

[7] Petitioners used the phrase "non-violent direct action" as code for their "blitzes," defining it to include forcibly blocking doors and operating rooms, SPA 2a, 110a-113a; RA 17a, 19a-20a, 38a-40a; T 1019, 1972, and even arson and bombing, JA 85-86; RA 41a. The district court noted Petitioners' frequent use of language with double meanings to engender fear of bodily harm. T 4531-32. Citing the "necessity defense," PLAN claimed that even its most violent crimes were lawful.. PX 712, p. 5, 713. Declaring legislative change too slow, RA 9a; PX 23B, PLAN's leaders vowed to stop abortions "in every way possible." T 3933. They publicly criticized those who urged true non-violence. *See* PX 905, p. 2 (Scheidler belittled Cardinal Bernadin's approach as "weak. It shows lack of leadership. . . ."). They called National Right-to-Life leaders "wimps" and "lily-pads for life." T 1511-12, 3936, 4144; PX 801, p. 13.

Over the fourteen years of its operation, PLAN mobilized anywhere from a few dozen to thousands of members from many states to carry out its "blitzes" in cities across the country.[8] JA 118; PX 17A, 1084; T 1374.[9] At annual conventions, PLAN developed and promoted innovative tactics for forcing clinics to close, PX 237, p. 5, including various types of "lock and blocks," using tools such as Kryptonite locks, chains, cement blocks, pipes, and even old cars. PX 148; RA 24a, 38a-39a.[10] PLAN members would dismantle the equipment only when the clinics consented to

[8] Petitioners' *amicus* Center for Individual Rights (Br. 16, 18) errs in suggesting that PLAN's violence was intrastate and non-economic. It was neither. NOW sued on behalf of patients nationwide along with two full-service clinics whose interstate business operations had been repeatedly disrupted by PLAN. T 647-48, 653; RA 23a-24a. Both Respondent clinics suffered substantial economic injury, affecting their interstate purchases of supplies and services and impairing their ability to provide medical care to both in-state and out-of-state patients. T 1369, 676-88. The jury expressly found that PLAN's predicate acts affected interstate commerce, JA 145, Q 8, and the trial court found that Petitioners "committed repeated . . . acts and threats of violence to persons and property across the United States," SPA 133a.

[9] In addition to the crimes detailed above, PLAN orchestrated attacks in Chicago; Farmington, Michigan; Jackson, Mississippi; Dobbs Ferry, New York; New York City; Fargo, North Dakota; San Antonio; and other locations. SPA 110a, 116a; T 1078.

[10] In Fargo, PLAN members invaded the clinic and, using metal pipes and metal boxes, attached themselves to the structure so they could be removed only with special metal-cutting tools. RA 24a. They vowed to make North Dakota, and later Vermont, "abortion-free" states. JA 116;

the equipment only when the clinics consented to close rather than face further violence. PX 513. On "National Days of Blitzes," PX 435A (10/19/85 entry, Tape 32), later called "National Days of Rescue," PX 25A, PLAN targeted dozens of locations across the country simultaneously. RA 5a (46 cities in April 1989). The time and the precise targets of PLAN's attacks were usually a closely guarded secret. T 1079, 1375, 4815. PLAN's *blitzkrieg* tactics were widely feared by abortion providers and their clients, and they were explicitly designed to cause such fear. SPA 114a-115a, n.2, 135a; RA 21a; T 1515-19, 977, 1871, 1916, 1918; PX 513, 640.

PLAN coupled its attacks with demands for closure and threats of more "blitzes." Many clinics surrendered and closed or curtailed operations at least for a time, as Petitioner Scheidler boasted: "[W]e got four abortion facilities to quit doing abortions one day. We just told them to quit. And if you don't we'll come in and shut you down." PX 1142; *see also* RA 17a-20a; PX 661, p. 2, PX 17A ("It is our hope that the clinic operators will willingly close for the day. If not, they will have to face the reality of dedicated prolifers who will intercede to [stop abortions].")[11] Clinics that did not give in to PLAN's threats incurred costs for repairs and for security to protect patients and staff. Patients bore the burden of added hotel and transportation needs as well as emergency medical care. T 768-76, 1523, 1920.

Since PLAN's strategy was to overwhelm local law enforcement and close clinics without legal consequences, SPA

PX 608, p. 2. (They made the same threat to DWHO. T 683; PX 435A (2/27/87 entry).)

[11] "We're going to have a virtual army out there," Scheidler vowed. "I'm not talking about the moderate. I'm talking about the hard core activists for whom the abortion clinic door means nothing. I would strongly suggest that [abortion provider Dr. Warren Hern] stay up at his house in the mo[u]ntains, or else take a vacation. If [Dr. Hern] sees it as a threat, that's fine." RA 21a.

114a; T 3938, 4815-16; RA 8a. PLAN leaders targeted cities where they thought law enforcement resources were weak; alternatively, they amassed so many "blitzers" that even well-staffed police forces could not stop them, *e.g.*, RA 26a-27a. Clinics that obtained territorially limited injunctions from local courts fared little better than those with none; PLAN leaders tore up court orders and continued with their "blitzes." PX 468, 1098; T 1068-69. As the trial court found, geographically limited injunctions had failed to prevent PLAN's crimes; PLAN would either ignore the injunctions altogether or move to new jurisdictions. SPA 134a-135a.

It was not just abortion patients who were made to accede to PLAN's demands. Respondent clinics offered a broad range of services, including gynecological treatment and adoption assistance, and PLAN targeted every woman trying to enter, including those with appointments for cancer screening, fertility treatment, and annual physicals, as well as those with appointments to purchase contraceptive products and counseling. SPA 111a-12a; PX 108; T 1914, 1368, 2552-54.[12] PLAN's goal was to control the rights of even non-abortion patients to spend their money at clinics that offered abortions because, as Scheidler explained, "we don't want them to go in for any service . . . ; it just keeps the abortionists in business." JA 128-29.

The Accommodations for Petitioners' First Amendment Rights

None of the predicate crimes was based on what OR (Br. 3) and *amicus* Life Legal Defense Foundation (Br. 3) call "guilt by association," or on mere attendance at PLAN events, as *amici* Seamless Garment, *et al.*, also suggest (Br.

[12] Patients were not mere "putative" or "prospective" patients, as Scheidler claims (Br. 3, 13, 17). Each had an appointment for a specific service at a specific time, and most had ongoing relationships with their medical providers. *E.g.*, RA 31a-32a, 35a-37a; T 655-58; JA 126-27.

12). Petitioners were all high-ranking PLAN leaders who organized and participated in the pattern of crimes that included 21 Hobbs Act violations. SPA 19a, 113a-116a. Before holding a Petitioner liable, the jury was required, in addition to finding that each Petitioner operated or managed the enterprise through a pattern of predicate crimes, to find that each crime on which liability was based was committed "knowingly, willfully and wrongfully," with each Petitioner's specific intent and with the authorization or ratification of their enterprise. JA 136, 140.

The trial judge commented that the proof that Petitioners authorized or ratified the crimes was voluminous enough "to fill up this courtroom." T 4563-64. Thus, crimes committed unintentionally or without PLAN's approval could not, and did not, trigger liability. Petitioners repeatedly reminded the jury of this requirement, *e.g.*, T 5045, 5050, and Petitioners do not challenge the adequacy of the proof even under these strict standards. *See* Sch. Pet., OR Pet. In addition, the trial judge required that crimes committed by any alleged PLAN member be closely tied to Petitioners; there was thus no risk that violence unauthorized by PLAN might be imputed to Petitioners. T 10-90 (2/27/98).

Contrary to OR's contentions (Br. 2), Respondents did not challenge Petitioners' right to engage in protected speech, even when it was unwelcome, uninvited, insulting, or outrageous. To the contrary, Respondents and the trial court reminded the jury that even offensive speech received First Amendment protection.[13] Thus, the verdict was not based on Petitioners' lawful conduct or anti-abortion message.

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[13] T 5118; JA 141. Respondents joined Petitioners in asking that the jury be instructed: "Nor is the right to engage in peaceful protest an issue in this lawsuit. The parties agree that peaceful picketing, leafleting and participating in the legislative process are activities protected by the First Amendment of the United States Constitution." JA 131; *see also* R1101, Final Pretrial Order, Agreed Instruction #18. Damages had to flow exclusively from the criminal acts, not from constitutionally protected speech that may have accompanied it. JA 139. Petitioners' counsel reminded the jury: any "fear . . . in this case must be the result of extortionate activities . . . [and] based on the extortionate activities and nothing less." Respondents' counsel reminded the jury not to include any protected conduct in the predicate acts. T 5118. Contrary to the assertions of *amici* Seamless Garment, *et al.* (Br. 6-7), Respondents did not argue that Scheidler's "choose life" card was a threat; it was introduced merely to place him at the scene. T 1468.

The evidence established far more than mere "interference" with the rights of clinics and patients. The jury was instructed that each predicate act had to be based on the "wrongful" use of force, violence or fear, and that constitutionally protected and other lawful conduct was excluded. *See, e.g.*, JA 131, 141. The court further instructed the jury that any fear flowing from Petitioners' wrongful conduct must have been reasonable. JA 136; *e.g.*, SPA 112a-13a; T 1375-76, 1871, 1866. Because the Hobbs Act requires the obtaining of property with the victim's consent, Respondents relied only on wrongful acts designed to make Respondents cede control of their property to Petitioners, not on crimes that entailed no demand to surrender property. JA 136; SPA 151a.

Proceedings on Remedy

After the jury rendered its unanimous verdict, the district court took additional evidence on whether an injunction was necessary. Despite Petitioners' contention that they had abandoned their wrongful conduct after enactment of the Freedom of Access to Clinic Entrances Act ("FACE"), 18 U.S.C. § 248 (1994), the trial court found that PLAN's pattern of crimes had continued unabated. Even when FACE injunctions had been issued against PLAN members, they continued to cross state lines to promote and carry out their crimes in new jurisdictions. SPA 134a. The district court therefore concluded that an injunction was necessary. SPA 13

The Seventh Circuit affirmed. Its decision expressed hope that the injunction would end the violence and promote peaceful discourse:

> [P]erhaps in the end the injunction may further rational discourse on one of the most volatile political controversies facing the nation today. Violence in any form is the antithesis of reasoned discussion. By directing those with passionate views about the abortion controversy—on either side—away from the use of threats and violence and back to 'all the peaceful means for gaining access to the mind,' the injunction the district court issued is in harmony with the fundamental First Amendment protection of free speech.

SPA 25a. To a significant extent, that hope has been fulfilled; the injunction ended PLAN's reign of terror, and in the ensuing three years, no enforcement action has been necessary. It has not put an end to lawful protest.

SUMMARY OF ARGUMENT

I. The court of appeals correctly held that Petitioners committed 21 violations of the Hobbs Act, which defines "extortion" as the "obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear . . . ." 18 U.S.C. § 1951(b)(2). Petitioners directed their conduct at the "property" of Respondent clinics because the plain meaning of the word "property" includes the tangible physical assets of a clinic as well as the intangible right of the clinic owner to use, control, and direct the use and disposition of those assets. Petitioners directed extortion against the property of clinic patients by preventing them from obtaining the fruits of their contracts for medical services and from spending their money at health centers of their choice. Petitioners wrongfully attempted to obtain property by seeking, through acts and threats of force and violence against the clinics and their patients, and absent any claim of right, to arrogate to themselves the control over such

property. Petitioners' threats caused Respondents to consent to the extortionate acquisition of their property, for at various times clinics and their patients capitulated to their demands and gave up their right to exclusive control over their assets, rather than face extreme consequences.

II. Petitioners also committed 25 violations of state extortion laws. Even apart from the Hobbs Act violations, the judgment should be affirmed on the basis of these RICO predicates, which are so numerous, related, and continuing as to constitute overwhelming evidence of a RICO pattern.

III. The court of appeals also correctly held that district courts may issue injunctions in private RICO suits upon proof that the RICO violation is likely to continue, where such issuance is in the public interest. The express terms and structure of the statute make this clear. Section 1964(a) provides that district courts may order "appropriate" remedies "to prevent and restrain violations" and to "impos[e] reasonable restrictions on future activities." Section 1964(c) confers standing on private parties who are injured in their business or property by a RICO violation. Nothing in § 1964(a) or in any other subsection of § 1964 precludes private parties from seeking injunctions, nor limits the availability of injunctions to the government. This plain reading is reinforced by other aspects of RICO's text and the presumption that the federal courts have power to issue injunctions unless Congress by "clearest command" takes that power away. *Califano* v. *Yamasaki*, 442 U.S. 682, 705 (1979); no such clear command—or even the barest hint of any such intention—can be discerned in RICO or its legislative history.

IV. Petitioners' acts were not peaceful, constitutionally protected protests, but regularly included assaultive and violent conduct designed to create and exploit the reasonable fears of medical providers and patients. The judgment thus raises no First Amendment concerns.

ARGUMENT

I. PETITIONERS COMMITTED HOBBS ACT EXTORTION BY WRONGFULLY USING FORCE AND VIOLENCE TO MAKE RESPONDENTS SURRENDER THEIR PROPERTY TO PETITIONERS.

Petitioners take the ordinary words of the Hobbs Act—"property," "obtai[n]," "consent," and "wrongful"—which have well-understood meanings developed over centuries of jurisprudence, and give each a cramped, unnatural construction. The result of Petitioners' linguistic legerdemain is a statute too circumscribed to achieve its obvious purposes and one that would be unrecognizable to its drafters.

Petitioners' conduct was extortion pure and simple. The Hobbs Act defines "extortion" as the "obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear . . . ." 18 U.S.C. § 1951(b)(2). The object of Petitioners' extortion was to override the clinics' lawful decisions about use of their business assets, including buildings, equipment, and personnel, and the patients' rights to the benefits of their fee-for-service contracts with medical providers. Petitioners attempted to obtain control over these valuable assets by actual or threatened "blitzes," which regularly included physical assaults and batteries on doctors, staff, and patients, and such other force as was necessary, coupled with express or implied demands that medical center operators shut down their businesses. Petitioners both obtained and attempted to obtain Respondents' property, and their wrongful acts fell comfortably within the Hobbs Act's reach.

Petitioners' conduct is just the sort that the Hobbs Act Congress sought to make unlawful. It is indistinguishable from crimes carried out by terrorist groups—for example, to induce banks to stop making loans to certain nations by threats of bombings; to induce investors to withdraw funds from disfavored global businesses by threats of kidnapping;

to induce retail establishments not to sell merchandise made by certain laborers by threats of violence to their premises or employees; or to induce patrons to refrain from buying, and stores to refrain from selling, fur coats by threatening to throw paint on customers. In each case, the extortionist uses an act or threat of force to secure the owner's consent not to use its property in a way the extortionist disfavors. The Hobbs Act's plain language and historic origins show that Congress intended to proscribe such dangerous and destructive conduct.

A. Petitioners Sought or Secured Control Over Respondents' "Property."

As this Court recognized over 40 years ago, the Hobbs Act "speaks in broad language, manifesting a purpose to use all the constitutional power Congress has to punish interference with interstate commerce by extortion." *Stirone* v. *United States*, 361 U.S. 212, 215 (1960). One of the Act's deliberately inclusive terms is "property." Property includes control over the use and disposition of one's resources, including business assets, money, and valid contracts.

This unremarkable principle is firmly grounded in centuries of legal thought and jurisprudence. Petitioners try to avoid this fact by arguing that interests like the "right to good government," state licensing powers, and liberty are not property, *see* OR Br. 40-41; Sch. Br. 16—propositions Respondents do not dispute. But nowhere do Petitioners offer a coherent theory of what property *does* comprise. They offer instead the unsupportable proposition that property may consist only of tangible things, perhaps a select few intangibles, or "property" that somehow can be distinguished from property "rights." Property, in their view, does not include the right to determine the use to which such assets are put. There is no merit to these selective limitations.

1. "Property" historically has encompassed the right lawfully to control one's assets.

Hobbs Act property is not limited to tangible items and some limited intangible assets like "stock or copyrights," as OR (Br. 39) argues. This crabbed view is flatly contradicted by the long-settled meaning of property. The very year the Act was being debated, this Court made clear that the construction OR advocates uses property "in its vulgar and untechnical sense of the physical thing with respect to which the citizen exercises rights recognized by law." *United States* v. *Gen. Motors Corp.*, 323 U.S. 373, 377-78 (1945). When "employed in a more accurate sense," property is defined as "the group of rights inhering in the citizen's relation to the physical thing, as the right to *possess*, *use* and *dispose of* it." *Id.* (emphasis added); *see also Phillips* v. *Washington Legal Found.*, 524 U.S. 156, 169-70 (1998) (property is "the group of rights which the so-called owner exercises in his dominion of the physical thing") (internal quotation marks and citation omitted).

Scheidler erroneously attempts to distinguish between "property" and "property rights" (Br. 13). But this Court has made clear that the legal term "property" refers to a set of *rights*, not just *things*. *See General Motors*, 323 U.S. at 377-78, 380. This understanding was well-established long before the Hobbs Act.[14] Authorities contemporaneous with the Act's passage make clear that property is a set of rights in anything of value—whether tangible or intangible—

[14] "[T]here is a consensus that the concept of property includes the rights of persons with respect to both tangible and intangible resources." Thomas W. Merrill, *Property and the Right to Exclude*, 77 NEB. L. REV. 730, 732 (1998). "As soon as any society, by custom or convention or law, makes a distinction between property and mere physical possession it has in effect defined property as a right . . . in the sense of an enforceable claim to some use or benefit of something." C.B. MacPherson, *The Meaning of Property*, *in* PROPERTY: MAINSTREAM AND CRITICAL POSITIONS 1, 3 (C.B. MacPherson ed., 1978).

protected by law.[15] Property does not include mere expectancies or privileges unprotected by law, nor rights that lack an economic element.[16] Property does, in contrast, include

[15] *See, e.g.*, Restatement of the Law, Property, Introductory Note (1936) ("property," as a set of "legal relations among persons with respect to a thing," is subdivided into rights, privileges, powers, and immunities, all of which constitute property); BLACK'S LAW DICTIONARY 1446 (3d ed. 1933) (property is the "aggregate of rights protected by the government," including "every species of valuable right and interest"); L. CORPUS JURIS 732 (1930) ("there can be no conception of property aside from its control and use").

[16] *See, e.g.*, *Carpenter* v. *United States*, 484 U.S. 19, 25 (1987) ("ethereal" rights not property); *McNally* v. *United States*, 483 U.S. 350, 356 (1987) (right to good government); *Town of West Hartford* v. *Operation Rescue*, 915 F.2d 92, 101-02 (2d Cir. 1990) (city officials' response to disturbances); *People* v. *Learman*, 28 N.Y.S.2d 360 (N.Y. App. Div. 1941) (driver's license, which is a revocable privilege); *see also Cleveland* v. *United States*, 531 U.S. 12 (2000) (state's regulatory power over licensing does not make it property owner of licenses); *cf. Carey* v. *Piphus*, 435 U.S. 247, 263 (1978) (constitutional rights lack inherent monetary value).

Petitioners wrongly suggest that the issue in this case is not property rights, but the right to abortion. *See* OR Br. 39-40, Sch. Br. 13. But the jury was specifically instructed that a "wom[a]n's right to obtain an abortion is not at issue in this lawsuit." JA 131. Scheidler (Br. 2) erroneously implies that the Seventh Circuit held that the Hobbs Act protects "liberty" rights; but the court was referring to *property* rights, as his own citation shows. SPA 28a-29a. Furthermore, when a constitutional liberty coincides with a property right, it is no less protected as property. *E.g.*, *State* v. *Cadigan*, 50 A. 1079, 1081 (Vt. 1901) (right to labor and transact business involves *both* liberty *and* property rights). Thus, newspapers have both property rights to publish editorials and First Amendment rights to do the same. Likewise here, some—but far from all—of the women seeking medical services were exercising a constitutional right to abortion, which in no way detracts from the fact that their contracts to exchange money for medical services are property. Where the constitutional right to abortion and these property rights coincided, any reference to the women's contractual rights to medical services as "constitutional" was simply surplusage.

contracts and rights created by contracts.[17] "Property is more than the mere thing which a person owns. It is elementary that it includes the right to acquire, use, and dispose of it." *Buchanan* v. *Warley*, 245 U.S. 60, 74 (1917).

The constellation of rights that comprise property is often analogized to a "bundle of sticks."[18] At the center of the bundle, as Blackstone taught centuries ago, are the rights to exclusive control—the rights to "the free use, enjoyment and disposal by a man of all his acquisitions, without any control or diminution, save only by the laws of the land." Sir William Blackstone, BLACKSTONE'S COMMENTARY ON THE LAW 73 (Bernard C. Gavitt ed., Wm. Hardcastle Brown 1941) (1892).

This Court has repeatedly embraced this foundational concept that dominion over the use and disposition of a thing is the essence of "property." Thus, the Court has held that the exclusive "right to decide how to use" confidential busi-

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[17] *See, e.g.*, E. Allan Farnsworth, CONTRACTS § 11.1 (2d ed. 1990) ("a contract is ... a type of intangible property"); *Northeast Women's Ctr., Inc.* v. *McMonagle*, 868 F.2d 1342, 1350 (3d Cir. 1989) (patients had a "property interest in entering into a contractual relationship" with medical clinic); *cf. Leonard Duckworth, Inc.* v. *Michael Field & Co.*, 516 F.2d 952, 955 (5th Cir. 1975) (in tortious interference context, "the common law has long held that the reasonable expectancy of a prospective contract is a property right"); *Morse* v. *Swank, Inc.*, 459 F. Supp. 660, 667 (S.D.N.Y. 1978) (same); *United States* v. *Rastelli*, 870 F.2d 822, 831 (2d Cir. 1989) (employees' rights created by contract was property under mail fraud statute). That contracts are generally regarded as a form of property was well-settled at the time of Hobbs Act enactment. *See, e.g.*, *Wilkinson* v. *Powe*, 1 N.W.2d 539, 543 (Mich. 1942); *Chitwood* v. *McMillan*, 1 S.E.2d 162, 163 (S.C. 1939); *Oswego Falls Pulp & Paper Co.* v. *Stecher Lithograph Co.*, 215 N.Y. 98, 102 (1915); *Gillespie* v. *People*, 188 Ill. 176, 183-84 (1900).

[18] *United States* v. *Craft*, 122 S. Ct. 1414, 1420 (2002) (citing B. Cardozo, PARADOXES OF LEGAL SCIENCE 129 (1928)); *see also* William B. Stoebuck & Dale A. Whitman, THE LAW OF PROPERTY § 1.2 (3d ed. 2000).

ness information, while intangible, is "property." *Carpenter* v. *United States*, 484 U.S. 19, 25-26 (1987).[19] Only last Term, the Court made clear that control over assets is property. *United States* v. *Craft* considered the government's power to attach an interest in a tenancy in the entirety for tax lien purposes, which it could do only if the interest was "property" or "rights to property." The Court held that the taxpayer's rights to use the tenancy, derive income from it, exclude others, and alienate his interest were property because they "gave him a substantial degree of control over the entireties property." 122 S. Ct. at 1423. Similarly, in *Drye* v. *United States*, 528 U.S. 49, 56, 61 (1999), citing authorities going back to 1932, the Court unanimously held that property covers "every species of right" protected by law and having an "exchangeable value," including the right "to exercise dominion over" an inheritance. *See also McNally* v. *United States*, 483 U.S. 350, 360 (1987) (for mail fraud, property includes "control over how ... money was spent").[20] Thus, it was settled law when the Hobbs Act was

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[19] The right to exclude is central to property, in large part because it determines the owner's right to control the use to which a thing is put. *See Kaiser Aetna* v. *United States*, 444 U.S. 164, 179-80 (1979). "The right to exclude leads directly to [one's] right to dictate the uses of" a particular subject of property, "because no one else will be in a position to interfere with the particular uses designated" by the holder of the right. Merrill, *supra*, 77 NEB. L. REV. at 741; *see also College Sav. Bank* v. *Florida Prepaid Postsecondary Educ. Expense Bd.*, 527 U.S. 666, 673-74 (1999) ("property" is what the owner can exclude others from using; contract law confers private rights, which are rights of exclusion). Although the Court in *Florida Prepaid* rejected the notion that a business has a constitutionally protected right to be free from false advertising or generally "to be secure," it in no way overruled decisions protecting as property one's exclusive control over business assets. *See id.* at 675 (business assets, including goodwill, "unquestionably are property").

[20] The fee-for-service relationship between the clinics and patients easily satisfies this definition, and the fact that some of the clinics were non-profit businesses does not suggest they lack property rights. *See, e.g.*, *United States* v. *564.54 Acres of Land*, 441 U.S. 506, 515 (1979).

passed that in its normal and accepted legal use "[b]y property we mean an exclusive right to control an economic good." Cohen, *Dialogue on Private Property*, 9 RUTGERS L. REV. 357, 360 (1954).

2. The Hobbs Act's origins show property includes the right to control both tangible and intangible assets.

The Hobbs Act debates show that Congress sought to punish wrongful threats and force designed to obtain control over another's assets. Thus, one congressman expressed his understanding that the Act would criminalize the conduct of "night-riders," who destroyed the tobacco crop of Kentucky farmers, burned their farm property, and intimidated and killed innocent people, all to force farmers to join a trade cartel. *See* 91 Cong. Rec. 11,906 (remarks of Cong. Robsion) (1945); *Tandy* v. *City of Hopkinsville*, 169 S.W. 703, 703-05 (Ky. 1914). That extortion of the right to control the use of business property is indistinguishable from the extortion here.

The Act's legislative history shows that Congress intended to adopt the common law understanding that "property" includes the intangible right to control the lawful use and disposition of one's assets. It is clear that Congress relied on New York extortion law in drafting an Act consistent with state law. *See* 91 Cong. Rec. 11,900, 11,906, 11,910.

Drye also noted that, contrary to Scheidler's contention (Br. 14), "transferability" has not been held essential to property. 528 U.S. at 60 n.7; *see also* J.W. Harris, PROPERTY AND JUSTICE 5 (Oxford U. Press: 1996) ("[t]ransmissibility is only a necessary feature of an ownership interest in the case of money"). In any event, Scheidler's argument is unavailing because the right to control an asset (which is the property sought to be obtained here) may be transferred. *See, e.g., United States* v. *Nardello*, 393 U.S. 286, 295 n.13 (1969) (organized crime uses extortion to "obtain control of labor unions"); *Perez* v. *United States*, 402 U.S. 146, 156 (1971) (loan sharking is used to "obtain[] control of legitimate businesses"); U.S. Br. 26 & n.14 and cases cited therein.

When the Hobbs Act was being debated, the great weight of state extortion law, including New York's, defined property to include intangibles.[21] New York's highest court had expressly endorsed Blackstone's view that "property consists in the free *use, enjoyment, and disposal* of all the owner's acquisitions, without any control or diminution, save only by the laws of the land," and that the state extortion statute used the term "in its broad and unrestricted sense," including both tangible and intangible property. *People* v. *Barondess*, 31 N.E. 240, 242 (N.Y. 1892); *see also People ex. rel. Short* v. *Warden*, 130 N.Y.S. 698, 700 (App. Div. 1911) (disapproving a lower court's narrow construction of property), *aff'd*, 99 N.E. 1116 (N.Y. 1912). Indeed, property had long been defined under New York law as encompassing "everything . . . which may be the subject of ownership," including not only money and chattels, but also "things in action" and written instruments involving rights in property. N.Y. Gen. Const. Law § 39 (1917) ("Property, Personal").[22]

That New York law prohibits (and prohibited) the use of threats to compel the victim to give up control over a business was powerfully affirmed by the New York Court of Appeals in *People* v. *Spatarella*, 34 N.Y.2d 157 (1974). There, the defendant threatened physical violence unless the victim ceased providing services to a particular customer, but argued that his conduct was not extortion because the business relationship was not amenable to a physical "taking" from the victim and "delivery" to the extortionist. *Id.* at 162. Relying heavily on New York cases pre-dating the Hobbs Act,

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[21] Pre-Hobbs New York case law primarily addressed the meaning of property in the context of threats to injure property under New York Penal Code § 851. As explained at pp. 19-20, *infra*, it has the same meaning there as in the context of "obtaining property."

[22] This inclusive definition applied to all statutes in which no contrary meaning was intended, *see In re Bronson*, 150 N.Y. 1, 5 (1896), and there is no reason to believe a narrower meaning was intended for extortion.

the court reasoned that the extortion was complete when the victim had been "deprived of" the choice whether to provide a service to a particular customer, regardless of whether that business literally could be taken or the customer delivered to defendant. *See id.* at 161-63.[23]

New York's pre-Hobbs Act extortion law explicitly protected the intangible right to operate a lawful business.[24] Prior to the Hobbs Act's passage, the Supreme Court of Cali-

[23] Petitioners seek to escape *Spatarella*'s holding by relying on a New York trial court decision, *People* v. *Squillante*, 185 N.Y.S.2d 357 (Sup. Ct. 1959), which opined that the word "property" might mean different things in two clauses within the extortion statute, and, therefore, that the class of property injured by an extortionist might be different from the class of property which the extortionist obtains. *See* OR Br. 34; Sch. Br. 23 n.16, 25, 27. No reported New York case has followed *Squillante*, and its tortured reasoning was squarely rejected by New York's highest court in *Spatarella*. *Spatarella* noted that, while the pre-Hobbs New York cases on which it relied had construed the term "property" to define the kind of property that can be threatened, and consistently held the term to include intangible rights, "[w]e are not disposed to construe the term differently in defining the property which can be demanded." 34 N.Y.2d at 162. *See also People ex rel. Short*, 130 N.Y.S. at 700 (discussing both the "threats" and "obtaining" clauses and finding that the lower court's construction of "'property' as used in *these sections* is too narrow" (emphasis added)). Though both *Squillante* and *Spatarella* postdate the Hobbs Act and so could not have informed the Hobbs Act Congress' intent, *see Evans* v. *United States*, 504 U.S. 255, 267 n.18 (1992), *Spatarella* explicitly aligns New York law with pre-Hobbs Act New York rulings that "property" within the extortion statute is "'intended to embrace every species of valuable right and interest,'" 34 N.Y.2d at 162, including business and business relationships, *see id.* (quoting *People ex rel. Short* v. *Warden*, 145 App. Div. 861, 863 (N.Y. App. Div. 1911)).

[24] *See, e.g., People* v. *Sheridan*, 174 N.Y.S. 327, 329 (App. Div. 1919) (threat to deprive victim of use of elevator was injury to property); *People* v. *Weinseimer*, 102 N.Y.S. 579, 587 (App. Div.) (injury to business is injury to property), *aff'd*, 83 N.E. 1129 (N.Y. 1907); *People* v. *Hughes*, 32 N.E. 1105, 1107-08 (N.Y. 1893) (characterizing intangible business assets as property); *Barondess*, 31 N.E. at 241-42 (upholding extortion conviction because "a loss resulting from the suspension or interruption of the business would necessarily be an injury to property").

fornia took the same view. Under the law of California, one of the first states to enact a statute based on the Field Penal Code, *see* Lindgren, *The Elusive Distinction Between Bribery and Extorting from the Common Law to the Hobbs Act*, 35 UCLA L. REV. 815, 892, n.472 (1988), the state's high court held that the intangible right to pursue an appeal is property, and that using threats to force abandonment of that right is extortion. *See People* v. *Cadman*, 57 Cal. 562 (1881). Hobbs Act property unquestionably includes the right to control both tangible and intangible resources, including one's money, valid contracts, and other business assets. Scheidler's suggestion (Br. 18-24) that this view is an ahistoric expansion of the nature of property post-dating the Hobbs Act is plainly wrong.

The common-law concept of property as control over the use of valuable assets was the background against which Congress passed the Hobbs Act. "'[W]here Congress borrows terms of art in which are accumulated the legal tradition and meaning of centuries of practice, it presumably knows and adopts the cluster of ideas that were attached to each borrowed word in the body of learning from which it was taken and the meaning its use will convey to the judicial mind unless otherwise instructed.'" *Evans*, 504 U.S. at 259-60 (quoting *Morissette* v. *United States*, 342 U.S. 246, 263 (1952)).

Since the Act's passage, the federal courts consistently have held that "property" under the Act must be read inclusively, and consistently have rejected narrow, artificial readings like those Petitioners offer. Just seven years after the Act took effect, the Eighth Circuit held that a "victim's rights under its construction contract" were Hobbs Act property. *Bianchi* v. *United States*, 219 F.2d 182, 189 (8th Cir. 1955). "The definition of property in the Act is not restricted to any particular type of property," the court observed; the Act's protective purpose mandates a definition that includes intangible property rights. *Id.* The following year, in *United States* v. *Green*, 350 U.S. 415, 417 (1956), this Court upheld

a conviction under the Act for the use of force to control an aspect of the victim's business: the number of employees it hired. And more than thirty years ago, the Second Circuit similarly held that property "is not limited to physical or tangible property or things, but includes, in a broad sense, any valuable right considered to be a source or element of wealth." *United States* v. *Tropiano*, 418 F.2d 1069, 1075 (2d Cir. 1969) (citations omitted).

The courts of appeals uniformly have rejected suggestions that the Act does not reach attempts to gain control of valuable assets, including the business decisions of another. Force and threats designed to change business decisions form the core of what is commonly regarded as extortion. The *Tropiano* defendant, for example, used threats of violence to deter a refuse collector from soliciting business from specific customers. The Second Circuit affirmed the conviction, holding that control over business decisions is Hobbs Act property:

> [The victim] had a right to solicit business from anyone in any area without any territorial restrictions by the appellants. . . . The right to pursue a lawful business including the solicitation of customers necessary to the conduct of such business has long been recognized as a property right.

418 F.2d at 1076. For over three decades the federal courts uniformly have followed *Tropiano* in holding that the right to conduct a lawful business without consenting to restrictions demanded by an extortionist falls squarely within the Hobbs Act.[25]

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[25] *See, e.g.*, *United States* v. *Stephens*, 964 F.2d 424, 433 n.20 (5th Cir. 1992); *United States* v. *Debs*, 949 F.2d 199, 201 (6th Cir. 1991); *United States* v. *Lewis*, 797 F.2d 358, 364 (7th Cir. 1986); *United States* v. *Hoelker*, 765 F.2d 1422, 1425 (9th Cir. 1985); *United States* v. *Local 560, Int'l Bhd. of Teamsters*, 780 F.2d 267, 281 (3d Cir. 1985); *United States* v. *Santoni*, 585 F.2d 667, 673 (4th Cir. 1978); *United States* v. *Nadaline*, 471 F.2d 340, 344 (5th Cir. 1973); *United States* v. *Overton*, 470 F.2d 761, 764 (2d Cir. 1972).

The holdings and reasoning of *Tropiano* and its progeny are fully applicable to extortion of medical services providers and the patients with whom they have economic relationships, as every lower court to consider the issue has held.[26] Medical centers are businesses, and the use of force or threats to make them close or restrict their services is extortion, as it would be if directed against any other lawful business. The women's exclusive right to spend their money on lawful medical services and to enter into fee-for-services contracts with businesses of their choice is also property over which Petitioners may not seek wrongfully to exercise control. Petitioners' explicit object was to "shut down the clinics," *NOW I*, 510 U.S. at 253, and to force patients to refrain from patronizing any business that offered abortions, JA 128-29. Petitioners' "blitzes" targeted each patient directly, as well as the essential elements the clinics required to operate their businesses: a building in which to function, T 1441-46; equipment and supplies with which to perform medical procedures, RA 23a-24a, 29a-30a, 34a-35a; T 1470-73; personnel to deliver those services, and customers to purchase those services, RA 31a-37a. This conduct, designed to drive the clinics out of business, is garden-variety extortion.[27]

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[26] *See, e.g.*, *United States* v. *Arena*, 180 F.3d 380, 393 (2d Cir. 1999), *cert. denied*, 531 U.S. 811 (2000); *McMonagle*, 868 F.2d at 1350; *Planned Parenthood of Columbia/Willamette, Inc.* v. *American Coalition of Life Activists*, 945 F. Supp. 1355, 1381 (D. Or. 1996), *aff'd in part on other grounds*, 290 F.3d 1058 (9th Cir. 2002) (*en banc*); *United States* v. *Anderson*, 716 F.2d 446, 450 (7th Cir. 1983); *see also Libertad* v. *Welch*, 53 F.3d 428, 437 n.4, 438 & n.6 (1st Cir. 1995) (patients have RICO claims for lost wages, travel expenses, or other specific damage) (dicta); *Town of W. Hartford* v. *Operation Rescue*, 915 F.2d 92, 101-02 (2d Cir. 1990) (dicta).

[27] It is hard to imagine how extortion of a business could be committed *except* through its employees or patrons, so each act of extortion directed at a clinic staff member or patient was extortion of the clinics.

B. By Seeking To Get Control of the Use and Disposition of Respondents' Property, Petitioners Sought To "Obtain" That Property.

Because control over the use and disposition of an asset is property, a defendant "obtains" property under the Hobbs Act by acquiring such control.[28] As the jury, district court, and Seventh Circuit correctly determined, Petitioners attempted to obtain property by using threats, force, and violence to make Respondents abandon lawful uses to which they customarily put their property. Respondents do not contend (as Petitioners say, OR Br. 29-32; Sch. Br. 12, 15-16) that Petitioners "obtained" property by causing physical damage to it. Instead, because the property sought was dominion and control over the ongoing use of assets, PLAN's direct attacks on clinic assets were just one means used to

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See, e.g., *McMonagle*, 868 F.2d at 1350 n.8 (illegal conduct against "employees and patients was directly related to Defendants' goal to shut down the clinic"); RA 29a-30a. Indeed, for this reason, the pre-Hobbs New York extortion statute specified that the offense included "obtaining the property of a corporation from an officer, agent or employee thereof." Penal Law of 1909, § 850, as amended, 1917 N.Y. Laws, ch. 518, codified in N.Y. Penal Law § 850 (McKinney Supp. 1965) (cited in *Evans*, 504 U.S. at 263 n.8). Because the rights of clinics, their employees, and their patients are analytically inseparable, a finding of extortion against the patients and employees necessarily constitutes a finding of extortion against the clinics.

Even apart from the extortion of the patients, however, it is clear that the verdict for the clinics rested on a pattern of extortion against the clinics themselves, for the jury specifically determined that both DWHO and SWHO had suffered damages proximately caused by at least two extortionate acts directed against them. JA 145-46 Q9, 10. *See, e.g. Griffin* v. *United States*, 502 U.S. 46, 55-58 (1991). Thus, the verdict plainly rested on an independent and permissible ground as to which multiple extortionate acts were found.

[28] "Since the Hobbs Act concept of property is broad, the Act's requirement that property be obtain[ed] is given a similarly broad construction." *Arena*, 180 F.3d at 394 (internal quotation marks omitted).

obtain the clinics' consent to Petitioners' exercise of control over the use of *all* clinic assets.[29]

Just as Petitioners advance an implausibly narrow definition of property, they urge a similarly cramped construction of "obtaining," arguing that the *obtaining* of property under the Hobbs Act requires a physical *taking* and carrying away, as robbery and larceny do. OR Br. 33-35; Sch. Br. 18-23.[30] That is not the law. New York extortion law in effect in

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[29] Even Petitioners acknowledged that inducing victims to "part with" property satisfies the "obtaining" element. Their proffered jury instruction stated: "In order to establish the predicate act of extortion under the Hobbs Act, the plaintiffs must prove that they *parted with* property . . . ." Final Pretrial Order, R1101, Tab Q No. 2. Making a victim "part with" or "give up" property, *see* OR Br. 33, is the "plain-English" way of expressing the Hobbs Act's obtaining element, *see, e.g.*, *Modern Federal Instructions, Criminal*, Matthew Bender & Co. (2001), Form Instruction 50-13.

[30] Petitioners cite commentary to the Field Penal Code for the proposition that extortion requires taking, *see* Sch. Br. 19, even though New York's first penal statute–the Penal Code of 1881–did not adopt the Field Code in its entirety. *See United States* v. *Mazzei*, 521 F.2d 639, 654 (3d Cir. 1975) (Gibbons, J., dissenting). To the extent that this commentary is relevant, it makes clear that robbery, larceny, extortion, and embezzlement must be "carefully distinguished." Proposed Model Penal Code of the State of New York § 584 (1865). Extortion requires "obtaining," N.Y. Penal Code §§ 850-857 (1944); robbery and larceny require "taking," *id.* §§ 1290, 2120, *e.g.*, a removal of tangible personal property, *see, e.g.*, Wayne R. LaFave & Austin W. Scott, Jr., 2 SUBSTANTIVE CRIMINAL LAW §§ 8.2, 8.11 (under common law, larceny and robbery required a trespassory taking); §§ 8.11, 8.12 (reflecting no requirement of a trespassory taking for extortion); § 8.12(b) (while robbery requires a taking from the person, extortion does not).

Petitioners also argue that because *People* v. *Ashworth*, 222 N.Y.S. 24 (App. Div. 1927), applied a more restrictive definition of property to a *larceny* charge, the same should hold here. Sch. Br. 23 n.17. But whether larceny required a "physical taking . . . of some concrete article," 222 N.Y.S. at 27-28, such a view has no relevance to extortion, as to which physical taking is not an element; Scheidler concedes as much, Br. 21 n.15.

1946 expressly prohibited coercive conduct involving property, without regard to whether the extortionist gained possession:

> The *compelling or inducing* of another, by such force or threat, to make, subscribe, seal, execute, alter or destroy any valuable security, or instrument or writing affecting or intended to affect any cause of action or defense or any property is an extortion of property within the last two sections.

N.Y. Penal Code § 853 (1944).[31] This provision is codified under Article 80 of the New York Penal Code—titled "Extortion and Threats"—not under Article 48, titled "Coercion."[32] RA 1a-4a. By its plain terms, § 853 shows that "extortion" under New York law covers wrongful acts to induce property

[31] Pre-Hobbs Act state case law also makes clear that the extortionist need not obtain possession of the victim's property. *See, e.g., People* v. *Scheppa*, 295 N.Y. 359, 361 (1946) (affirming conviction where victim was made to "part with" money that defendant did not receive). OR (Br. 34) cites *People* v. *Ryan*, 232 N.Y. 234 (1921), to suggest receipt is necessary, but *Ryan* found criminal intent, not "obtaining," to be lacking.

[32] Petitioners' contention (OR Br. 35-36; Sch. Br. 28-32), that they may be guilty only of "coercion" is misguided; extortion is simply a subset of coercion that involves property, and Petitioners' conduct easily falls within that subset. Coercion involves the use of force to compel another to engage or refrain from engaging in certain conduct. *See* N.Y. Penal Law § 530 (1909). Extortion occurs whenever coercion is used to take control of another's property. Indeed, non-public official extortion is called "coercive extortion." *Evans*, 504 U.S. at 261 n.9. If only liberty is the object of a threat, only coercion has occurred. Thus, using force to make one give up the right to free speech is coercion but not extortion. But wrongful conduct designed to coerce others to cede control over decisions about the use of their assets is both coercion and extortion. *See, e.g., People* v. *Wisch*, 296 N.Y.S.2d 882, 884-86 (Sup. Ct. 1969) (defendant liable for both coercion and extortion for threatening to ruin milk dealers' businesses if they did not agree to fix prices). Extortion *is* coercion, for coercion is a lesser included offense. *See People* v. *Eboli*, 313 N.E.2d 746, 748 (N.Y. 1974); *cf. People* v. *Powell*, 50 Cal. App. 436, 440 (Dist. Ct. App. 1920) (extortion "involves an element of coercion").

owners to destroy their property; the extortionist obtains control without receiving anything. There is no plausible reason to think the Hobbs Act Congress viewed similar wrongful conduct against business assets in a more benign light.

This Court has made clear that acquiring control over the use of property is "obtaining property" for Hobbs Act purposes. *United States* v. *Green*, 350 U.S. 415, 421 (1956), reversed a lower court holding that the Act was limited to "the taking of property from another for the extortionist's personal advantage." As the Court explained, Hobbs Act extortion "in no way depends upon having a direct benefit conferred *on the person who obtains the property*." *Id.* at 420 (emphasis added).[33] *Green*'s holding that the extortionist has "obtained the property" even when someone else "receives" it shows that "obtain" does not mean "receive." Regardless of the property's final disposition, what the extortionist obtains is *control*.

This sound principle undergirds the many appellate rulings that "loss to the victim" is the gravamen of extortion.[34] Although "most extortionists undoubtedly seek a direct and tangible economic benefit," others "may be motivated only by a desire to humiliate the victim." *Lewis*, 797 F.2d at 364

[33] *See also* Model Penal Code § 223.05 (to "obtain" is to cause a transfer of a property right . . . "whether to the obtainer or another").

[34] *See, e.g., United States* v. *Stillo*, 57 F.3d 553, 559 (7th Cir. 1995); *United States* v. *Hairston*, 46 F.3d 361, 365 (4th Cir. 1995); *Lewis*, 797 F.2d at 364; *United States* v. *Clemente*, 640 F.2d 1069, 1079-80 (2d Cir. 1981); *United States* v. *Frazier*, 560 F.2d 884, 887 (8th Cir. 1977); *United States* v. *Starks*, 515 F.2d 112, 124 (3d Cir. 1975); *United States* v. *Hyde*, 448 F.2d 815, 843 (5th Cir. 1971); *United States* v. *Jacobs* 451 F.2d 530 (5th Cir. 1971); *United States* v. *Provenzano*, 334 F.2d 678, 686 (3d Cir. 1964). Thus, Hobbs Act liability attaches when the extortionist uses wrongful conduct to obtain control over another's assets. *See Carbo* v. *United States*, 314 F.2d 718 (9th Cir. 1963) (extortion whose object was "control over" a boxer); *cf. Rutkin* v. *United States*, 343 U.S. 130, 131, 136-37 (1952) (money is taxable if extortionist has "control over it").

n.3 (noting that it would violate the Hobbs Act to demand that victim burn $1 million in cash). Some—as here—seek to wrest control of another's use and control of property for political or religious reasons. Still others shake down competitors to affect their market share. *See, e.g., Tropiano*, 418 F.2d at 1076 (making victim give up right to solicit trash removal business satisfied "obtaining property" element); *United States* v. *Zemek*, 634 F.2d 1159, 1174 (9th Cir. 1980); *Spatarella*, 34 N.Y.2d at 162. If an extortionist threatens violence against a refuse collector, for example, seeking to force it to abandon a route, it is extortion even though the extortionist would still need to bid for the job to acquire it. The possibility of increased market share may be the *motive* for the extortion, but the property *obtained* is control over the victim's business asset. The "obtaining" is complete once the extortionist uses wrongful conduct designed to gain control.[35]

Petitioners plainly attempted to obtain Respondents' property, and in some cases they succeeded. For 14 years, PLAN used terrifying "blitzes" to decree the ends to which the Respondent clinics could dedicate their premises, their equipment, and the services of their personnel. PLAN members also threatened that unless clinic property was not used on particular days, or unless contracts for particular services were cancelled, they would use whatever means were necessary, including force and violence, to accomplish that goal. Thus, in 1985, PLAN demanded a "Christmas Truce," and

[35] *United States* v. *Panaro*, 266 F.3d 939 (9th Cir. 2001), is not to the contrary, *see* Sch. Br. 12. *Panaro* observed in *dicta* that, though it "'is not necessary to prove that the extortioner himself, directly or indirectly, received the fruits of his extortion or any benefit therefrom,'" "someone—either the extortioner or a third person—must receive the property of which the victim is deprived." *Id.* at 948 (internal citation omitted). In cases like this one involving extortion of control over business assets, the defendant receives precisely that which the victim is made to relinquish: control.

Scheidler told all Chicago-area clinics to halt abortion services on a given day, threatening to enter their premises for compliance inspections and take all necessary action to stop medical procedures if they failed to comply.[36] Understandably, clinics often capitulated rather than expose their staff and patients to danger. T 1378, 1877-78. Indeed, Petitioners boasted that "prolifers in 17 cities did not need to risk arrest because all of the [clinics] closed down for fear of the upcoming rescues." RA 5a.

Respondent patients likewise were threatened with bodily harm if they proceeded with their lawful economic relationships with the clinics. When Respondents did not comply with PLAN's demands, PLAN members beat on patients' cars, grabbed and pulled them, scratched and clawed them, struck them, and threw them to the ground. *See* p.2, *supra*. Although some refused to give in, *e.g.*, RA 25a-27a; T 1872, others surrendered their right to obtain services in exchange for a fee rather than face the attacks, *e.g.*, T 1918-20. The Hobbs Act criminalizes just this type of strong-arming of lawful economic decisions.

C. Petitioners Used Threats and Force To Obtain "Consent."

Petitioners unquestionably sought to induce Respondents "consensually" to surrender their property. As the Second Circuit has observed, "consent" under the Hobbs Act is somewhat illusory. The extortionist foists upon the victim the Hobson's choice of "relinquishing some property immediately or risking unlawful violence resulting in other losses," and the victim chooses "what he perceives to be the lesser harm." *Arena*, 180 F.3d at 395 (citing 91 Cong. Rec. 11,904-

[36] *See also* RA 17a-20a, PX 17A p. 1 ("It is our hope that the clinic operators will willingly close for the day. If not, they will have to face the reality of dedicated pro-lifers who will intercede to [stop abortions].").

07). Creating such "choices" was Petitioners' *modus operandi*.

Thus, the property Petitioners destroyed was not the property they "obtained." *See* OR Br. 42-43; Sch. Br. 15-16. Obviously, the destruction of clinic property was not consensual. Violence and vandalism were the *means* of the extortion, not the end.[37] *See United States* v. *Enmons*, 410 U.S. 396 (1973) (damage to transformer was means, not object, of extortion). As in most extortion schemes, Petitioners used force to make credible their threats that harm would occur—or continue—if their victims refused to surrender control of their property. That control was what Petitioners unlawfully obtained and sought to obtain.[38]

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[37] Petitioners complain, *e.g.*, OR Br. 4-5; Sch. Br. 6, that Respondents' counsel argued in closing that each time PLAN physically closed a clinic, it was extortion. Because each act of force functioned as an express or implied threat that the attacks would continue, counsel's argument was correct. (Notably, Petitioners did not object to such argument. T 5003, 5005, 5008, 5037.) But even if the argument omitted the consent element, it is well-settled that counsel's arguments do not control; jury instructions do. *See Weeks* v. *Angelone*, 528 U.S. 225, 234 (2000). The jury was properly instructed that the judge, not counsel, would instruct them on the law, and that they were to follow those instructions, *see* T 4932, which required the element of consent, *see* JA 136-37. Also, because the jury was correctly instructed that the Hobbs Act prohibits attempts, *see* JA 136-37, it properly could have found each forced closing to be an attempted extortion, *see Arena*, 180 F.3d at 393.

[38] Petitioners' *amici* say that FACE would not have been enacted if Petitioners' conduct was covered by the Hobbs Act, *e.g.*, *States of Alabama, et al.* Br. 17-18. But nothing in FACE suggests Petitioners' conduct fell outside the Hobbs Act or RICO. Congress's decision to enact FACE in 1994 cannot dictate the meaning of the 1946 Hobbs Act or the 1970 RICO Act. *See, e.g., Haynes* v. *United States*, 390 U.S. 85, 87 n.4 (1968). FACE explicitly provides that "[n]othing in this section shall be construed to provide exclusive criminal penalties or civil remedies with respect to the conduct prohibited by this section." 18 U.S.C. § 248(d)(3). Thus, victims can sue for both violations of FACE and violations of RICO that incorporate Hobbs Act predicates. *See, e.g., Planned Parenthood of Columbia/Willamette, Inc.* v. *American Coalition of Life Activ-*

D. Petitioners' Conduct Was "Wrongful."

Contrary to OR's protestations, (Br. 44-46) PLAN's "blitzes" and exploitation of Respondents' understandable fears of blitzes were "wrongful" under the Hobbs Act. The Act gives no license for extortion to advance personal moral codes. "There is no exception to the Hobbs Act permitting extortion for [a religious] purpose," *United States* v. *Starks*, 515 F.2d 112, 124 (3d Cir. 1975), nor for a social cause, *United States* v. *Mitchell*, 463 F.2d 187, 193 (8th Cir. 1972) (rejecting exemption for civil rights activity, and quoting Congressman Hobbs: "[A] crime is a crime, no matter who commits it"); *see also United States* v. *Cerilli*, 603 F.2d 415, 419-20 (3d Cir. 1979) (extorting contribution to political party). Extortionists may always cite some benign or even laudable goal for their crime—to pay for a child's education, to obtain customers, to further political or social ends—but no goal justifies acts or threats of force to make others surrender lawful property. As this Court observed in *NOW I*, 510 U.S. at 260, racketeering harms the economy regardless of the perpetrators' motives.[39] And, as the concurring opinion of Justices Souter and Kennedy explained, a "bad motive" requirement would protect both too little and too much. *Id.* at 263-64. The text, history and purpose of the Hobbs

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ists, 23 F. Supp. 2d 1182, 1188 (D. Or. 1998). The United States, which pursues Hobbs Act and FACE prosecutions in tandem, agrees. *See* U.S. Dep't of Justice, National Task Force on Violence Against Health Care Providers, *Report on Federal Efforts to Prevent and Prosecute Clinic Violence, 1998-2000*, at 1, *available at* http://www.usdoj.gov.

[39] In *United States* v. *Culbert*, 435 U.S. 371 (1978), the Court acknowledged the Act's purposeful breadth, including its clear intent to reach conduct that also violates state law. "Congress intended to define as a federal crime conduct that it knew was also punishable under state law. The legislative debates are replete with statements that the conduct punishable under the Hobbs Act was already punishable under state ... extortion statutes." *Id.* at 379. The import of the Act in declaring Congress' purpose to reach interference with interstate commerce "in any way or degree" is unmistakable. 18 U.S.C. § 1951(a).

Act—like RICO—make clear that one gets no immunity for wrongful conduct by citing a legitimate goal.

Enmons, 410 U.S. at 400, on which Petitioners heavily rely (OR Br. 44-46; Sch. Br. 15-16 & n.11), is not to the contrary. *Enmons* recognized a legitimate-labor-objective exception to the Hobbs Act, which existed under New York pre-Hobbs Act extortion law and common law before that. *See A.S. Beck Shoe Corp.* v. *Johnson*, 274 N.Y.S. 946, 952-54 (Sup. Ct. 1934). (OR errs (Br. 45) in suggesting that the Act does not refer to labor, *see* § 1951(c).) Every court to consider the question in the context of force and violence has agreed that *Enmons* "merely carved out a labor exception to the traditional law of extortion codified in the Hobbs Act." *United States* v. *Zappola*, 677 F.2d 264, 269 (2d Cir. 1982); *see also United States* v. *Mulder*, 273 F.3d 91, 104 (2d Cir. 2001), *cert. denied*, 122 S. Ct. 1344 (2002); *United States* v. *Debs*, 949 F.2d at 200-01. Courts long have recognized that, if extended outside the labor context, *Enmons* would eviscerate the Hobbs Act, because extortionists can always cite a benign purpose for their acts. *See, e.g., United States* v. *Sturm*, 870 F.2d 769, 772 (1st Cir. 1989).[40] Not only does this case not involve legitimate labor goals, but Petitioners also had no rightful claim to Respondents' property.[41]

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[40] As Scheidler notes (Br. 6), the Hobbs Act covers wrongful threats of economic as well as physical harm. When one has a right to threaten economic harm, as with hostile takeovers, boycotts, or lawful pickets, some courts have found it not wrongful, but merely a form of "hard-bargaining," to use that threat to obtain an advantage, or to condition forbearance on a *quid pro quo*. *See, e.g., Viacom Int'l, Inc.* v. *Icahn*, 747 F. Supp. 205, 213 (S.D.N.Y. 1990), *aff'd on other grounds*, 946 F.2d 998 (2d Cir. 1991); *United States* v. *Albertson*, 971 F. Supp. 837, 845-46, 848-49 (D. Del. 1997), *aff'd*, 156 F.3d 1225 (3d Cir. 1998). These "hard-bargaining" and "moral suasion" cases have no application here because Petitioners eschewed lawful conduct in favor of violent attacks, which they had no right to commit. PX 35C, 23B; RA 7a.

[41] Petitioners' attempts to invoke the rule of lenity similarly fall short. OR Br. 49; Sch. Br. 32-33. This Court has expressly rejected the application of the rule of lenity to the Hobbs Act. *Culbert*, 435 U.S. at 379. That rule applies only when "there is a grievous ambiguity or uncertainty in the statute," *Muscarello* v. *United States*, 524 U.S. 125, 138-39 (1998) (internal quotation marks and citations omitted), and as the Court said in *Culbert*, 435 U.S. at 379, "we decline to manufacture ambiguity where none exists."

II. EVEN APART FROM THE HOBBS ACT PREDICATES, THE JUDGMENT WOULD STAND.

Even without the Hobbs Act predicates, the judgment is fully supported because the jury's separate finding of 25 state law extortion predicates remains undisturbed. JA 143, Q4(b). Contrary to OR's arguments (Br. 49-50), *United States* v. *Nardello*, 393 U.S. 286 (1969), does not hold that state extortion offenses must be identical to Hobbs Act extortion to be RICO predicates. *Nardello*, decided just before RICO was enacted, stands for the well-recognized rule that, in determining what state offenses are predicates under a federal statute that incorporates state extortion law, "the inquiry is not the manner in which States classify their criminal prohibitions but whether the particular State involved prohibits the extortionate activity charged." 393 U.S. at 295.

Nardello holds that labels are irrelevant in considering state extortion offenses, and a state offense is extortion if the conduct "would be generically classified as extortionate." *Id.* at 290, 294. The test for determining whether the charged acts fit into the generic category of the predicate offense is whether the offense constitutes "a type of activity generally known or characterized in the proscribed category." *United States* v. *Forsythe*, 560 F.2d 1127, 1137 (3d Cir. 1977).[42]

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[42] *Taylor* v. *United States*, 495 U.S. 575 (1990), (OR Br. 49) provides Petitioners no more help. Like *Nardello*, *Taylor* holds that in designating predicate offenses under the three-strikes law, Congress used "uniform, categorical definitions to capture all offenses of a certain level of seriousness . . . regardless of technical definitions and labels under state law." 495 U.S. at 590.

"Generic" extortion is "obtaining something of value from another with his consent induced by the wrongful use of force, fear, or threats," *Nardello*, 393 U.S. at 290.[43] State laws criminalizing such conduct "generically" are viewed as extortion statutes, regardless of the scope of Hobbs Act extortion. Because, as shown above, Petitioners' conduct involved using acts and threats of force to obtain control over something of value, that is, Respondents' business decisions, it "generically" constituted extortion.[44]

OR's notion that RICO incorporates only state offenses redundant of the Hobbs Act (Br. 49) is flatly inconsistent with RICO's scheme. *See United States* v. *Turkette*, 452 U.S. 576, 586 (1981).

Thus, even without the Hobbs Act predicates, the jury's verdict would stand on the 25 state extortion predicates. The weight of authority holds that, if some predicate acts are overturned on appeal but two or more remain, RICO's pattern requirement is satisfied and the verdict should be affirmed. *See, e.g., United States* v. *Thomas*, 114 F.3d 228, 250-51 (D.C. Cir. 1997); *United States* v. *Peacock*, 654 F.2d 339, 348 (5th Cir. 1981); *Brennan* v. *United States*, 867 F.2d 111, 114-16 (2d Cir. 1989). This rule is consistent with

[43] State extortion laws bearing different labels include Wis. Stat. § 943.30 (1965) ("threats") and Minn. Stat. § 609.27 (1967) ("coercion"), *see Nardello*, 393 U.S. at 294 n.12.

[44] Physical transfer cannot be a requirement of "generic" extortion law, for numerous state extortion convictions have been secured where the "something of value" targeted by the extortionist was intangible and could not be physically received. *See, e.g., State* v. *Taylor*, 632 P.2d 892, 896-97 (Wash. Ct. App. 1981) (a threat to force victim to "close down" business and "leave town in 10 days" was attempt to obtain property under state extortion law; the "owner" of property is one who has exclusive right to "exert control" over it); *People* v. *Baker*, 88 Cal. App. 3d 115, 118-19 (1978) (upholding extortion conviction where defendant wrongfully attempted to induce victim to drop administrative protest with state alcohol control board).

Neder v. *United States*, 527 U.S. 1, 17 (1999), holding that a verdict will not be reversed if "overwhelming evidence" in the trial record demonstrates that the "verdict would have been the same absent of the error." Here, the jury independently found *not just two but 25 violations*—"overwhelming evidence" of the pattern of Petitioners' state extortion crimes.

Furthermore, all of the acts that supported the jury's finding as to Hobbs Act violations also supported its findings as to state law violations, as Petitioners concede. *See* OR Br. 5 n.9.[45] Thus, in reaching its verdict, the jury necessarily determined that these acts were sufficiently "related" and "continuing" to constitute a RICO pattern. *See H.J. Inc.* v. *Northwestern Bell Tel. Co.*, 492 U.S. 229, 238-39 (1989). Having found a pattern when considering the "virtually identical" Hobbs Act claims, the jury unquestionably would have found a pattern if only state extortion were at issue,[46] and no jury reasonably could have found otherwise, *cf. Neder*, 527 U.S. at 16-17. Petitioners virtually admitted that their many acts of force and violence were related and continuing, *e.g.*, PX 3B, 20B, 25A, 36, 162B, 312, 513, 1123; RA 5a-7a, and did not contest the pattern issue at trial, *see, e.g.*, T 5044-111 (in 67 pages of closing argument, Petitioners never argued there was no pattern). The jury could not possibly have

[45] Indeed, as OR recognizes, the jury found slightly fewer federal than state violations, presumably because of the interstate-commerce element of the former; however, with regard to those offenses as to which the interstate-commerce element was satisfied, the jury found both federal and state law to have been violated. *See* JA 144 Q4(d) (finding that the total of 21 acts of actual or attempted federal extortion and 25 acts of actual or attempted state extortion equaled 25, showing that the Hobbs Act violations were a subset of the state-law violations).

[46] Petitioners' reliance on *Griffin* v. *United States*, 502 U.S. 46 (1991), (Sch. Br. 17), is misplaced. *Griffin* affirmed a general verdict even though it may have rested on a prong of the instruction as to which the evidence was insufficient. *Id.* at 60; *see also Johnson v. United States*, 520 U.S. 461, 469 (1967) (improper jury instruction subject to harmless error analysis).

found a pattern in Petitioners' 21 Hobbs Act violations but not in their 25 state extortion violations.[47]

III. RICO PERMITS PRIVATE LITIGANTS TO SEEK INJUNCTIVE RELIEF.

Petitioners urge a reading of RICO that does violence to the statute's express terms and is inconsistent with the principle that "[a]bsent the clearest command to the contrary from Congress, federal courts retain their equitable power to issue injunctions in suits over which they have jurisdiction." *Califano* v. *Yamasaki*, 442 U.S. 682, 705 (1979). Petitioners inaccurately claim that the decisions of the courts below are "aberrant" events in a thirty-year history of RICO decisions. OR Br. 8; Sch. Br. 36. In fact, the Seventh Circuit was the first court of appeals to be required to decide whether a permanent injunction was available to private plaintiffs who demonstrate entitlement.[48] Courts that had previously addressed the point had done so only in *dicta* and even in *dicta* were split on the question. SPA 6a; Opp. Cert. 7-8.

A. RICO Expressly Authorizes Injunctive Relief to Private Parties.

Statutory interpretation begins with a statute's language and where, as here, that language is unambiguous, it ends

[47] At trial, Petitioners made no meaningful objection to the state extortion instruction, and their failure to object with any specificity, plus their failure to raise the objections properly in the Seventh Circuit, waived any possible objections. *See* Opp. Cert. 23-26. The state extortion violations are also sufficient to support the full measure of damages, for the jury awarded all the damages sought by the DWHO and SWHO, JA 146, proving that the jury found that each act of extortion against the clinics had been proved.

[48] The case Petitioners cite most frequently, *Religious Technology Center* v. *Wollersheim*, 796 F.2d 1076 (9th Cir. 1986), considered only whether *interim* injunctions were available. *Wollersheim* decided the issue on an undeveloped record. The Ninth Circuit raised the issue on its own initiative; both parties and the lower court assumed injunctions were available to private parties. *See id.* at 1080.

there. *See Estate of Cowart* v. *Nikos Drilling Co.*, 505 U.S. 469, 479 (1992). Section 1964(a) unambiguously gives district courts broad power to remedy RICO violations, including the power "to prevent and restrain violations of section 1962" and to "impos[e] reasonable restrictions on the future activities" of statute violators.[49]

Section 1964(a) does not address standing. Standing is conferred in § 1964(b) for the United States and in § 1964(c) for private parties whose business or property is injured by RICO violations. Nothing in either § 1964(b) or § 1964(c) precludes the United States or private parties from seeking equitable remedies under § 1964(a). By giving private plaintiffs standing, § 1964(c) creates a gateway for them to seek appropriate remedies, including injunctions.

Because nothing in RICO's text precludes injunctive relief to private parties, Petitioners are forced to argue (OR Br. 9-10; Sch. Br. 41-42) that a limitation on the powers conferred by § 1964(a) is imposed by other subsections, which, they say, make the government the exclusive beneficiary of remedies identified in § 1964(a). According to Petitioners, since the government is authorized to seek *interim* injunctive relief under § 1964(b), the absence of an express reference to equitable relief for private plaintiffs in § 1964(c) precludes private-party injunctions. Nothing in § 1964(b) states or im-

[49] The Seventh Circuit correctly rejected Petitioner Scheidler's argument (Br. 42-43 n.31) that § 1964(a) is "purely jurisdictional." Section 1964(a) "grant[s] district courts authority to hear RICO claims and then spells out a non-exclusive list of the remedies district courts are empowered to provide in such cases." SPA 9a. Even OR says (Br. 9) that § 1964(a) both "confers jurisdiction and authorizes certain remedies." Because § 1964(a) identifies remedies, it cannot be "purely jurisdictional." The Seventh Circuit's ruling comports with this Court's jurisprudence. *See, e.g., Steel Co.* v. *Citizens for a Better Env't*, 523 U.S. 83, 94 (1998) ("jurisdiction" refers to the court's "power to declare law," not to remedies or standing).

plies, however, that § 1964(a) is restricted to the government.[50]

Similarly, § 1964(c) does not indicate that treble damages are a private plaintiff's exclusive remedy. As the Seventh Circuit reasoned, because the government's authority to seek permanent injunctions stems from the combination of the grant of a right of action in § 1964(b) and the grant of authority for courts to enter injunctions in § 1964(a), there is "no reason not to conclude, by parity of reasoning, that private parties can also seek injunctions under the combination of grants in §§ 1964(a) and (c)." SPA 8a. Petitioners claim (OR Br. 14; Sch. Br. 41) that, because § 1964(b) says the Attorney General "may institute proceedings," while § 1964(c) says private plaintiffs "may sue," only the Attorney General can seek permanent injunctive relief. But this conclusion does not follow. As the Seventh Circuit found, these phases are "equivalent" (SPA 8a), and both allow parties with standing to use §1964(a) to seek injunctions.

In addition, federal courts are "presum[ed]" to retain all of the equitable powers conferred by the Judiciary Act of 1789, 1 Stat. 73, 78, unless a statute clearly denies such equitable relief. *Motorola Credit Corp.* v. *Uzan*, 202 F. Supp. 2d 239, 244 (S.D.N.Y. 2002); *see also Grupo Mexicano de Desarrollo, S.A.* v. *Alliance Bond Fund, Inc.*, 527 U.S. 308, 318-19 (1999). This Court has long required the "clearest command" from Congress before federal courts can be stripped of their equitable powers. *Califano*, 442 U.S. at

[50] That § 1964(b) authorizes the Attorney General to seek *temporary* relief is not evidence that only the Attorney General is permitted to seek permanent forms of relief. "Indeed, if the availability of injunctive relief were determined by reference to Section 1964(b), rather than Section 1964(a), Section 1964(a) would be superfluous," *Chambers Dev. Co.* v. *Browning-Ferris Indus.*, 590 F. Supp. 1528, 1540 (W.D. Pa. 1984), and "courts should disfavor interpretations of statutes that render language superfluous," *Connecticut Nat'l Bank* v. *Germain*, 503 U.S. 249, 253 (1992).

705; *see also Porter* v. *Warner Holding Co.*, 328 U.S. 395, 398 (1946). "[W]here federally protected rights have been invaded, it has been the rule from the beginning that courts will be alert to adjust their remedies so as to grant the necessary relief." *Bell* v. *Hood*, 327 U.S. 678, 684 (1946); *Franklin* v. *Gwinnett County Pub. Sch.*, 503 U.S. 60, 70-71 (1992) ("[A]bsent clear direction to the contrary by Congress, the federal courts have the power to award any appropriate relief in a cognizable cause of action brought pursuant to a federal statute.").

Here, RICO expressly provides for injunctive relief; but even absent § 1964(a), not even Petitioners contend that RICO expressly *denies* injunctive relief to private parties. Congress enacted RICO with the understanding that the courts of law and equity had merged, broadly enabling courts, in their discretion, to award equitable relief as a remedy for injured parties with standing. *See Grupo Mexicano*, 527 U.S. at 318-19; *Atlas Roofing Co.* v. *Occupational Safety & Health Review Comm'n*, 430 U.S. 442, 459 (1977). Moreover, RICO includes both the unrestricted grant of equitable power in § 1964(a), and a statutory mandate that its stated remedies are not intended to supersede any additional civil remedies available by virtue of other provisions of law. *See* Organized Crime Control Act of 1970, Pub. L. No. 91-452, § 904(b), 84 Stat. 922, 947.

The injunctive remedy is particularly important because RICO addresses ongoing criminal enterprises that in many cases, as here, commit open-ended pattern crimes. In addition, in class actions such as this one, "injunctions may be necessary to protect the interests of absent class members and to prevent repetitive litigation." *Califano*, 442 U.S. at 705. Nothing in the text of RICO even remotely suggests that courts should be stripped of their inherent equitable powers.[51]

[51] Petitioners try to avoid the inherent federal court power to grant equitable relief by citing cases where this Court has refused to find an

Petitioners also cite cases where this Court has refused to find an implied *damages* remedy where a statute did not provide one. *See, e.g., Middlesex County Sewerage Auth.* v. *Nat'l Sea Clammers Ass'n*, 453 U.S. 1, 18 (1981); *see also Transamerica Mortgage Advisors, Inc.* v. *Lewis*, 444 U.S. 11, 24 (1979). These cases are inapposite because RICO explicitly provides for injunctive relief in § 1964(a); because § 904(b) expressly provides that RICO does not supersede other civil remedies; and because the federal courts have inherent power to award injunctions.

The Seventh Circuit's ruling is also faithful to the statutory mandate that RICO "be liberally construed to effectuate its remedial purposes." Pub. L. 91-452, § 904(a), 84 Stat. 922, 947 (1970). RICO's liberal-construction clause—a rarity in criminal statutes—was included to ensure that "Congress' intent is not frustrated by an overly narrow reading of the statute." *Reves* v. *Ernst & Young*, 507 U.S. 170, 183 (1993). Indeed, this Court consistently has rejected interpretations that would unduly limit RICO's scope.[52] This Court has stressed that "*the statute's remedial purposes are nowhere more evident than in the provision of a private action* for those injured by racketeering activity." *Sedima*, 473 U.S. at 498 (emphasis added). Petitioners' argument that RICO confines the remedies specified in § 1964(a) to only the government undermines RICO's liberal-construction clause and this Court's stated view in *Reves* of the importance of

implied private cause of action. OR Br. 11; Sch. Br. 44, citing, *e.g.*, *Alexander* v. *Sandoval*, 532 U.S. 275, 286 (2001); *National R.R. Passenger Corp.* v. *National Ass'n of R.R. Passengers*, 414 U.S. 453, 464-65 (1974). But Petitioners' argument mistakenly conflates right to sue with remedy. *See Franklin*, 503 U.S. at 69.

[52] *See, e.g., Cedric Kushner Promotions, Ltd.* v. *King*, 533 U.S. 158, 165 (2001); *Salinas* v. *United States*, 522 U.S. 52, 61-66 (1997); *NOW I*, 510 U.S. at 256-62; *H.J. Inc.* v. *Northwestern Bell Tel. Co.*, 492 U.S. 229, 236-37 (1989); *Sedima, S.P.R.L.* v. *Imrex Co.*, 473 U.S. 479, 498 (1985); *Turkette*, 452 U.S. at 587-591.

broadly construing RICO's remedies section.[53] *See Chambers*, 590 F. Supp. at 1540 ("If a private plaintiff were denied the right to sue for equitable relief, th[e] purpose [of the liberal-construction clause] would be frustrated.").

B. Petitioners Improperly Attempt To Narrow RICO.

Petitioners argue that the interpretation of §1964(a) is controlled by two nearly century-old antitrust cases. OR Br. 11-15; Sch. Br. 37-41. This argument (like Petitioners' flawed reading of § 1964) reads part of the antitrust laws out of context to support a result that contradicts a plain reading of the RICO statute as a whole. Petitioners also ignore key structural differences between the antitrust laws and RICO.

Neither *Minnesota* v. *Northern Securities Co.*, 194 U.S. 48 (1904), nor *Paine Lumber Co.* v. *Neal*, 244 U.S. 459 (1917), held that the treble damages provision of the Sherman Act excluded private injunctive relief. Neither case rested on the Sherman Act treble damages provision; rather, both turned on standing. *See Northern Sec.*, 194 U.S. at 70

[53] Honoring RICO's liberal-construction clause, courts have rejected similarly restrictive readings of § 1964. For example, *Fireman's Fund Insurance Co.* v. *Stites*, 258 F.3d 1016 (9th Cir. 2001), rejected the argument that because the language of § 1964(d) permits only the government to use a criminal RICO conviction as collateral estoppel, private plaintiffs could not do so. The court held that the abrogation of collateral estoppel requires a clear expression, not mere silence, and found that Congress did not intend to deny private plaintiffs this traditional remedy. *See id.* at 1020; *see also County of Cook* v. *Lynch*, 560 F. Supp. 136, 139 (N.D. Ill. 1982); *Anderson* v. *Janovich*, 543 F. Supp. 1124, 1128-29 (W.D. Wa. 1982). Similarly, a decision not to let private parties seek injunctions suggests that granting them the right to seek treble damages "manifested an intention to subtract the right to obtain other forms of relief. How addition might be converted [to] subtraction in a remedial statute that must be liberally construed strains even the legal imagination." G. Robert Blakey, *The RICO Civil Fraud Action in Context: Reflections on Bennett* v. *Berg*, 58 NOTRE DAME L. REV. 237, 331-32 (1982).

(plaintiff had no standing because it lacked antitrust injury); *Paine Lumber*, 244 U.S. at 471 (same). The Court's decision in both cases hinged on § 4 of the Sherman Act, the statutory mandate that the Attorney General bring suits to restrain violations. That section provides in part:

> The several circuit courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this act; and *it shall be the duty of the several district attorneys of the United States*, in their respective districts, under the direction of the Attorney General, to *institute proceedings* in equity to prevent and restrain such violations.

(Emphasis added). Because § 4 made it the government's express duty to sue for injunctions, the Court concluded that Congress did not intend private parties to do the same.

In marked contrast to § 4 of the Sherman Act, RICO's permanent-injunctions section, § 1964(a), does not mention any particular party; it directly grants power to issue injunctions to the federal courts without restriction as to party. If permanent-injunction language had been included in § 1964(b), which mentions only the government, or if the same governmental-duty language in Sherman § 4 had been included in § 1964(a), Petitioners would have a stronger argument. But RICO's remedies section was not written that way. The important textual differences between Sherman § 4 and RICO § 1964(a) show that *Paine Lumber* and *Northern Securities* (both decided before the merger of law and equity, *Atlas Roofing Co.* 430 U.S. at 459), have no application.

Like the Sherman Act, the Clayton Act contains major structural differences from § 1964. Section 15 of the Clayton Act, 38 Stat. 730, 736-37 (1914), 15 U.S.C. § 25, is almost identical to § 4 of the Sherman Act, expressly imposing a duty on the *government* to "institute proceedings in equity to prevent and restrain" violations; RICO's § 1964(a) has no such governmental duty clause. Because § 1964(a) is not limited to any particular party, it was unnecessary for Congress to address private injunctive relief separately, as it was in the Clayton Act, where § 15 contains the government's "duty" language. 15 U.S.C. § 26.[54]

In fact, Congress deliberately drafted RICO separate from the antitrust laws to avoid antitrust precedent on matters such as standing and causation. *See Sedima*, 473 U.S. at 498. As a result, this Court often has rejected the antitrust analogy when analyzing RICO. *See, e.g., Tafflin* v. *Levitt*, 493 U.S. 455, 460 (1990); *Sedima*, 473 U.S. at 498. Where, as here, the language and structure of the antitrust laws significantly differ from that of RICO, those laws provide no meaningful guidance.

C. RICO's Legislative History Does Not Help Petitioners.

Petitioners' foray into legislative history (OR Br. 15-18; Sch. Br. 43-48) ignores this Court's admonition that it is the language of RICO itself that provides "the most reliable evidence of [congressional] intent," *Turkette*, 452 U.S. at 593. This Court consistently has held that only the "most extraordinary showing of contrary intentions from [the legislative history] would justify a limitation on the 'plain meaning' of the statutory language." *Garcia* v. *United States*, 469 U.S. 70, 75 (1984); *see also Salinas*, 522 U.S. at 57. Because RICO's text is unambiguous, there is no need to resort to legislative history. *Cf. NOW I*, 510 U.S. at 261. But even if there were some ambiguity in RICO, Petitioners cannot satisfy the high burden of establishing clear congressional intent to limit the federal courts' power to grant injunctions.[55]

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[54] In drafting RICO, Congress combined the language from several sections of the Clayton Act: § 4, authorizing private treble damages; § 15, making it the duty of the Attorney General to sue for injunctions; and § 16, authorizing private injunctions, into a single section, § 1964.

[55] Scheidler cites his former counsel, G. Robert Blakey, in support of his legislative history argument. Sch. Br. 45. But Scheidler neglects to cite Professor Blakey on the RICO issue before the Court for the good

Petitioners urge two particularly unreliable uses of legislative history. First, Petitioners suggest, relying largely on *Religious Technology Center* v. *Wollersheim*, 796 F.2d 1076 (9th Cir. 1986), that because Congress did not enact a proposal that would have separately provided for private injunctions, the broad statutory grant of equitable power in § 1964(a) should be restricted to the government. OR Br. 17 n.16; Sch. Br. 47. This argument is based on the erroneous notion that Congress was repeatedly presented with the opportunity expressly and separately to permit private plaintiffs to seek injunctions and repeatedly rejected it. OR Br. 16; Sch. Br. 48; U.S. Br. 12-13.

In fact, Congress never rejected such a provision. In RICO's floor debate, Representative Steiger offered an amendment addressing a number of RICO's provisions, including the amount in controversy, intervention by the Attorney General, statute of limitations, damage remedies for the government, and private injunctions. *See* 116 Cong. Rec. 35,346 (1970). "The proposal was greeted with some hostility because it had not been reviewed in Committee, and Steiger withdrew it without a vote being taken." *Sedima*, 473 U.S. at 487-88; *see also* Blakey, 62 NOTRE DAME L. REV. at 550, n.103 (judiciary committee members agreed to oppose all floor amendments). Petitioners make much of the com-

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reason that, in his extensive writings, Professor Blakey repeatedly has observed that Congress clearly intended in RICO to provide private parties with equitable remedies. *See, e.g.*, G. Robert Blakey, *The RICO Civil Fraud Action in Context: Reflections on Bennett* v. *Berg*, 58 NOTRE DAME L. REV. 237, 331 (1982) ("It is difficult to see how a court could conclude that RICO does not provide equitable relief for private parties. Section 1964(a) is a general grant of equitable power. It is not limited on its face or in its legislative history."); G. Robert Blakey & Scott D. Cessar, *Equitable Relief Under Civil RICO: Reflections on Religious Technology Center* v. *Wollersheim*, 62 NOTRE DAME L. REV. 526, 551 (1987). Indeed, Scheidler's own 1993 brief to this Court appeared to concede that private injunctions were available. *See* Br. for Scheidler Resp'ts, *NOW I*, *available at* 1993 WL 459767, at *17.

ments surrounding the amendment's withdrawal (OR Br. 17-18; Sch. Br. 47), but they fail to quote what Representative Steiger himself said: "[T]he bill as it now stands . . . may have this option [of equitable relief]." 116 Cong. Rec. 35,347 (1970).

After RICO became law, a similar amendment affecting multiple provisions was introduced. 117 Cong. Rec. 46,386, 46,393 (1971). The Senate Judiciary Committee reported favorably on the bill, and it passed the Senate without a single vote against it, 118 Cong. Rec. 29,368-69, 29,379 (1972); but the bill was never voted on by the House, 119 Cong. Rec. 10,317 (1973).

The fact that RICO's sponsors asked that an amendment affecting many of RICO's provisions be withdrawn without a vote, or that the same bill was later approved without opposition by the Senate but not voted on by the House, says nothing about congressional intent regarding the particular proposed provision relating to private equitable relief. *See Craft*, 122 S. Ct. at 1425 (congressional inaction lacks significance because many inferences may be drawn from inaction). Failure to pass a bill that would have amended several of RICO's provisions may be explained by many reasons, including opposition to some other portion of the amendment or the belief that such a provision was redundant. *See Central Bank of Denver, N.A.* v. *First Interstate Bank of Denver, N.A.*, 511 U.S. 164, 187 (1994) (bill may fail if Congress believed existing legislation already incorporated change). This Court's decisions make clear that this type of legislative history is equivocal at best. It surely is not the requisite "clearly expressed legislative intent" that Petitioners must show to trump both RICO's text and the federal courts' inherent power.[56]

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[56] *See Solid Waste Agency of N. Cook County* v. *United States Army Corps of Eng'rs*, 531 U.S. 159, 169-70 (2001) (subsequent history is a dangerous ground on which to rely). The Ninth Circuit in *Wollersheim*

Petitioners' second legislative history argument is equally unavailing. They contend that because the Senate initially passed RICO without § 1964(c)'s treble damages provision, § 1964(c) must be read in a vacuum, as if § 1964(a) were not part of the statute. OR Br. 15; Sch. Br. 43-44. In essence Petitioners argue that the meaning of § 1964(a) is somehow frozen in time at a point when the bill had no application to private parties.[57] But Congress chose to put § 1964(c) into a section addressing remedies that it knew included subsection (a); and, having granted private parties standing, made no effort to change the language of § 1964(a) to limit its reach only to the government. Petitioners' argument ignores the principle that Congress legislates "through the passage of a bill which is approved by both Houses and signed by the President," not by versions of bills as they may have stood at some particular point prior to enactment. *Central Bank*, 511 U.S. at 186.

D. Private Injunctions Serve RICO's Express Purpose and Public Policy.

An express purpose of RICO is to eradicate crime in the United States "by establishing new penal provisions, and by providing enhanced sanctions and new remedies to deal with the unlawful activities of those engaged in organized crime."

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recognized that the language of § 1964 could be construed as allowing private injunctions. *See* 796 F.2d at 1084, 1085. However, it rejected this construction based on what it called the "mandate" of legislative history. As the Seventh Circuit ruled, SPA 6a, *Wollersheim*'s heavy reliance on particularly unreliable forms of supposed legislative history no longer conforms to this Court's jurisprudence, if it ever did.

[57] OR pretends (Br. 14) that the injunctive-relief issue was resolved by this Court's discussion of legislative history in *Sedima*. OR selectively quotes *Sedima*, conveniently ignoring the fact that *Sedima* was merely discussing the evolution of RICO's remedial provisions. Rather than holding that § 1964(a) *is* limited to injunctive actions by the United States, *Sedima* actually says "[t]he civil remedies in the bill passed by the Senate, S 30, *were* limited to injunctive actions by the United States and became §§ 1964(a), (b), and (d)." 473 U.S. at 486-87 (emphasis added).

Pub. L. 91-452, 84 Stat. 922, 922-23 (1970). Congress created RICO's civil remedies to encourage private plaintiffs "to fill prosecutorial gaps," *Sedima*, 473 U.S. at 493, and to turn victims "into prosecutors, 'private attorneys general,' dedicated to eliminating racketeering activity," *Rotella* v. *Wood*, 528 U.S. 549, 557 (2000). Since government suits are brought to address harms to private parties, "[n]o satisfactory explanation can be offered as to why Congress would have precluded victims from seeking help themselves." *Bennett* v. *Berg*, 710 F.2d 1361, 1366 (8th Cir. 1983) (en banc) (McMillian, J., concurring in part and dissenting in part) (quoting Blakey, 58 NOTRE DAME L. REV. at 331-32). And where racketeers who injure private businesses are judgment-proof, as Petitioners claim to be, *e.g.*, PX 1503, the threat of damages alone has no deterrent effect. Thus, private injunctive relief is essential to effectuate RICO's purpose.

Nor should the Court accept Petitioners' invitation (Sch. Br. 48-50; *see also* U.S. Br. 14) to limit the law's reach on policy grounds. Petitioners ask the Court to add an unwritten restriction to RICO because, they say, the courts are incapable of exercising discretion in response to private-party requests for injunctions. Yet neither Petitioners nor their *amici* point to a single instance in which a federal court has had any difficulty exercising equitable discretion in a private-plaintiff antitrust case, a power that antitrust laws have long allowed.

For decades this Court has recognized that "'[t]he essence of equity jurisdiction has been the power of the Chancellor to do equity and mould each decree to the necessities of the particular case.'" *California* v. *American Stores Co.*, 495 U.S. 271, 295 (1990) (quoting *Hecht Co.* v. *Bowles*, 321 U.S. 321, 329 (1944)). That the government may be entitled to a particular remedy in a given case would not automatically entitle private parties to the same relief. *See id.* And while not every remedy available under § 1964(a) will be appropriate in every case, *see Turkette*, 452 U.S. at 585, this fact affects neither the general availability of equitable relief

under RICO nor the specific grant of a traditional injunction here.

Petitioners' argument also ignores the statutory limits on a court's power to issue equitable relief. Section 1964(c) provides that persons injured in their business or property by reason of a violation of § 1962 "may sue therefor." This language introduces the limitation that there must be a direct nexus between the injury to business or property and any equitable relief awarded. Such restriction prevents the imposition of a remedy such as corporate dissolution unless it is shown that such remedy would redress the plaintiff's injury to "business or property," a very difficult showing to make. By contrast, here, the remedy—a traditional injunction—was specifically tied to protection of the property at issue.

After a full trial on the merits, the district court concluded that Petitioners have "a history of unlawful conduct," including "repeated acts and threats of extortion" against Respondents and other persons and business entities across the United States. SPA 133a. Based on the need to protect Respondents and the public from ongoing crime, it issued a permanent injunction to prevent future extortion. Such relief serves the very core of RICO's purposes, and this Court should decline Petitioners' invitation artificially to limit RICO's equitable remedies.

IV. APPLICATION OF RICO TO PETITIONERS' PATTERN OF WRONGFUL THREATS, FORCE, AND VIOLENCE WILL NOT CHILL LAWFUL PROTEST.

Imposition of RICO liability on those who use acts and threats of force and violence to compel their victims to surrender valuable uses of their property cannot chill *lawful* protest activities; it can only chill thuggery.[58] Every aspect of

[58] Petitioners' arguments in this regard, *e.g.*, OR Br. 25-28, Sch. Br. 35, are an impermissible attempt to resurrect OR's proposed Question 4 and Scheidler's proposed Question 3, on which *certiorari* was denied.

the trial below was guided by this Court's decision in *NAACP* v. *Claiborne Hardware Co.*, 458 U.S. 886 (1982). *See, e.g.*, SPA 140a (tailoring injunction so as not to infringe protected speech or conduct). *Claiborne Hardware* held that harm caused by *protected* speech or conduct cannot serve as a basis for liability; only unprotected conduct—including wrongful threats—may be considered. *See* 458 U.S. at 920-21, 925-26. *Claiborne Hardware* also made clear that crimes committed by a member of a group may not be imputed to the group or its leaders unless specifically intended, and authorized or ratified, by those sought to be held responsible. *See id.* at 919-20, 925-27. This cardinal principle, barring findings of guilt for mere association, was faithfully applied to Petitioners and their enterprise. JA 136, 139-41.[59]

This is not a borderline case. Petitioners' campaign of hooliganism sets this case far apart from lawful picketing, leafleting, and civil rights activity such as the peaceful lunch counter sit-ins.[60] The jury was specifically admonished that

[59] The "parade of horribles" Petitioners and their *amici* trot out—*e.g.*, a protestor who *accidentally* breaks an opponent's glasses—were all precluded by the *Claiborne Hardware*-based jury instructions here, or by the requirements of RICO and the Hobbs Act themselves. To violate the Hobbs Act, the wrongful conduct must be designed to control another's property; it must involve the wrongful use of force, violence or fear; the extortionist must seek the victim's consent induced by duress; and the wrongful conduct must proximately cause damage and affect interstate commerce. Many protesters seek to affect government action (*e.g.*, storming the Capitol to protest war); but because governmental action is not property, such protest would not violate the Hobbs Act. For a RICO violation to comport with *Claiborne Hardware*, the conduct must be both intentional, and authorized or ratified by the extortionist's enterprise. *See* JA 131, 134, 136, 139-41. Such conduct, however motivated, is properly subject to RICO.

[60] The alarmist claims of Petitioners and their *amici* that the rulings below would brand Dr. Martin Luther King, Jr. a racketeer are baseless. Dr. King did not operate an enterprise through a pattern of violence or threats to intimidate others to give up their property rights. His peaceful

the "right to engage in peaceful protest" was not at issue. It was told that "peaceful picketing, leafleting and participating in the legislative process;" the expression of "a particular viewpoint;" uninvited, unwelcome, insulting and outrageous speech; and even advocacy of the use of force and violence could *not* be bases of liability. JA 131, 141. Asked to determine whether Petitioners went beyond protected speech and beyond mere sit-ins or blockades, the jury responded affirmatively, finding dozens of wrongful acts and threats of force and violence. As an extra safeguard, the jury was asked whether any of the predicate crimes was based on a mere sit-in or blockade. The jury answered, "No." JA 145 Q6. These safeguards ensured that it was the voluminous and overwhelming evidence of intentional, wrongful threats, force, and violence specifically intended by Petitioners and authorized or ratified by their enterprise—not lawful protest—that led to the verdict of liability against them. SPA 109a-141a (judgment of trial court reaching same conclusion).

This case shows that, when properly limited by First Amendment principles, RICO is a vital tool to combat nationwide campaigns of terror by organized groups that target lawful businesses of whose practices they disapprove. RICO is particularly important when the victim is a lawful but unpopular business or its customers, and when law enforcement cannot or does not protect those who, like the clinics and women here, are "especially vulnerable to the threat of mob violence." *Bray* v. *Alexandria Women's Health Clinic*, 506 U.S. 263, 349 (1993) (O'Connor, J., dissenting).

CONCLUSION

This Court should affirm the judgment of the court of appeals.

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methods to secure the constitutional rights to which he was entitled were the antithesis of PLAN's *blitzkrieg* campaign.

Respectfully submitted,

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SEPTEMBER 2002

APPENDIX A

N.Y. Penal Code (1944)

ARTICLE 80
Extortion and Threats

§ 850. Extortion defined

Extortion is the obtaining of property from another, or obtaining the property of a corporation from an officer, agent or employee thereof, with his consent, induced by a wrongful use of force or fear, or under color of official right. As amended, L.1917, c. 518, eff. Sept. 1, 1917.

§ 851. What threats may constitute extortion

Fear, such as will constitute extortion, may be induced by an oral or written threat:

1. To do an unlawful injury to the person or property of the individual threatened, or to any relative of his or to any member of his family or to a corporation of which he shall be an officer, stockholder, employee or agent; or,

2. To accuse him, or any relative of his or any member of his family, of any crime; or,

3. To expose, or impute to him, or any of them, any deformity or disgrace; or,

4. To expose any secret affecting him or any of them; or,

5. To kidnap him or any relative of his or member of his family; or,

6. To injure his person or property or that of any relative of his or member of his family by the use of weapons or explosives. As amended L.1911, cc. 121, 602; L.1917, c. 518, eff. Sept. 1, 1917.

§ 852. Punishment of extortion

A person who extorts any money or other property from another, under circumstances not amounting to robbery, is punishable by imprisonment not exceeding fifteen years, if the same is done by means of force or a threat mentioned in section eight hundred and fifty or in either of the first four subdivisions of section eight hundred and fifty-one, and by imprisonment for not less than five years nor more than twenty years if the same is done by means of a threat mentioned in subdivisions five or six of the latter section. As amended L.1909, c. 368; L.1911, c. 602, eff. Sept. 1, 1911.

§ 853. Compulsion to execute instrument

The compelling or inducing of another, by such force or threat, to make, subscribe, seal, execute, alter or destroy any valuable security, or instrument or writing affecting or intended to affect any cause of action or defense or any property is an extortion of property within the last two sections.

§ 854. Extortion committed under color of official right

A public officer, or a person pretending to be such, who, unlawfully and maliciously, under pretense or color of official authority:

1. Arrests another, or detains him against his will; or,

2. Seizes or levies upon another's property; or,

3. Dispossesses another of any lands or tenements; or,

4. Does any other act, whereby another person is injured in his person, property, or rights,

Commits oppression and is guilty of a misdemeanor.

§ 855. Public officer taking illegal fees commits extortion

A public officer who asks, or receives, or agrees to receive, a fee or other compensation for his official service:

1. In excess of the fee or compensation allowed to him by statute therefor; or,

2. Where no fee or compensation is allowed to him by statute therefor,

Commits extortion and is guilty of a misdemeanor.

§ 856. Blackmail

A person who, knowing the contents thereof, and with intent, by means thereof, to extort or gain any money or other property, or to do, abet, or procure any illegal or wrongful act, sends, delivers, or in any manner causes to be forwarded or received or makes and parts with for the purpose that there may be sent or delivered, any letter or writing, threatening:

1. To accuse any person of a crime; or
2. To do any injury to any person or to any property; or,
3. To publish or connive at publishing any libel; or,
4. To expose or impute to any person any deformity or disgrace,

Is punishable by imprisonment for not more than fifteen years. As amended L.1909, c. 368, eff. Sept. 1, 1909.

§ 857. Attempts to extort money or property by oral threats

A person who, under circumstances not amounting to robbery, or an attempt at robbery, with intent to extort or gain any money or other property, orally makes such a threat as would be criminal under any of the foregoing sections of this article or of section five hundred and fifty-one, if made or communicated in writing, is guilty of a misdemeanor. The provisions of this section do not apply to matters governed by section eight hundred and fifty-one of this act. As amended L.1911, c. 121, eff. Sept. 1, 1911.

ARTICLE 48

Coercion

§ 530. Coercing another person a misdemeanor.

A person who with a view to compel another person to do or to abstain from doing an act which such person has a legal right to do or to abstain from doing, wrongfully and unlawfully,

1. Uses violence or inflicts injury upon such other person or his family, or a member thereof, or upon his property or threatens such violence or injury; or,

2. Deprives any such person of any tool, implement or clothing or hinders him in the use thereof; or,
3. Uses or attempts the intimidation of such person by threats or force,

Is guilty of a misdemeanor.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

[Plaintiffs' Exhibit 14B: Randall Terry's letter dated May 25, 1989]
(Excerpts)

OPERATION RESCUE

* * *

May 25, 1989

* * *

Since the last letter I wrote you from the Los Angeles County Jail an incredible amount of events have transpired. On April 29th, the National Day of Rescue II, rescue groups in 46 cities participated in rescue missions. Also, pro lifers in another 17 cities did not need to risk arrest because all of the killing centers closed down for fear of the upcoming rescues.

* * *

Your fellow soldier in the battle,
Randall A. Terry
Founder

* * *

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

[Plaintiffs' Exhibit 23B: Joseph M. Scheidler's article
ACTIVISM: A New Direction, January 1989]
(Excerpts)

* * *

Aggressive tactics such as rescue missions, massive demonstrations, and protests at the abortuary sites and abortionists' homes are necessary.

* * *

One of the most effective activities taking place at present is Operation Rescue, the brainchild of Randall Terry of Binghamton, NY. Operation Rescue was officially launched in New York City in May, 1988, after a successful trial run in Cherry Hill, NJ, in which several hundred people were arrested and an abortuary closed for the day. In the four days of sit-ins in New York City, more than 1600 protestors were arrested. Several abortuaries were closed for the day during the operation.

* * *

Many of those new to the pro-life movement believe Operation Rescue sprang up out of thin air. Nothing could be further from the truth. Years of laying the groundwork for such an operation and planting the seeds of activism went into its success. Sit-ins, as rescue missions were formerly called, had taken place in cities throughout the country in the seventies and eighties.

* * *

The four activists organizations I have directed have all supported rescue missions.

* * *

The goal of Operation Rescue's organizers is to overwhelm the law enforcement system, and thereby gain free access to the clinics without legal consequences.

* * *

APPENDIX D

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

[Plaintiffs' Exhibit 35C: Letter to Editor, Milwaukee Sentinel, July 2, 1983]
(Excerpts)

The U.S. Supreme Court's June 15 ruling striking down restrictive abortion legislation in Ohio, Virginia and Missouri should make it clear to anti-abortionists that they can no longer put their trust in legislation or litigation, but must take their fight against abortion to the doors of abortion clinics.

* * *

Joseph M. Scheidler, Executive director of the Pro-Life Action League, Chicago

APPENDIX E

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

[Plaintiffs' Exhibit 435A: Transcripts of Audiotapes]
(Excerpts)

* * *

Pro-Life Action News for Monday and Tuesday, June 24-25, 1991

The Pro-Life Action Network Convention in Wichita, KS last week was a roaring success. Nearly 200 activists attended sessions and workshops on Thursday and Friday and concluded with effective field training Saturday that closed all 3 Wichita abortion mills.

* * *

Pro-Life Action News for Monday and Tuesday, May 13-14, 1991

* * *

PLAN stands for Pro Life Action Network. PLAN began in Kansas City more than a decade ago when pro-lifers meeting for the National Right to Life convention there vowed that whenever pro-life activists gathered it would be difficult for local abortionists to perform their grisly, homicidal surgery if dicing of the human being can ever be considered surgery.

PLAN was formerly launched in Ft. Lauderdale, FL, and was designed to program activism for one year at a time. Out of PLAN grew Operation Rescue, pickets of abortionists homes, malpractice law suits against abortionist, the lock and block, and innumerable other non-violent but effective actions. Some of the great names of the activist movement first became recognized at PLAN gatherings such as Randall

Terry, Joseph Foreman, and Denny Hartford. Joan Andrews was an early member of PLAN as were Roy McMillan, Don Treshman, and many others.

* * *

Pro-Life Action News for Monday and Tuesday, July 22, 1991

* * *

Out in Wichita, KS a new Atlanta may be brewing. Reports we've been getting say that all 3 Wichita abortuaries were closed for a whole week while pro-lifers were there and they now plan to stay on. Also, in Fargo, ND, it's focus on Fargo concentrating on the lone abortion mill in that state. Pro life leaders are inviting activists to visit both cities. See you there.

* * *

APPENDIX F

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

[Plaintiffs' Exhibit 628: Letter from Joseph M. Scheidler attaching answers to written questions to Ms. Magazine.]
(Excerpts)

PRO-LIFE ACTION LEAGUE

January 15, 1983
Ms. Magazine Corp.
370 Lexington Avenue
New York, NY 10017
Attn: Features Editor

* * *

[Question, p. 7]

6. Describe the main activities of your group?

I consider some of my main activities organizing protests, demonstrations, sidewalk counseling at the clinics, occasional sit-ins, blitzes, leafleting heavily populated areas

* * *

7. What are your goals now? Long term. Short Term?

Long term goal is to stop abortion, make it illegal. Short term is to stop abortion in every way possible until we have it outlawed

* * *

APPENDIX G

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

[Plaintiffs' Exhibit 674: Letter from Joseph M. Scheidler to Joseph P. Wall on April 29, 1986]
(Excerpts)

PRO-LIFE ACTION LEAGUE
Joseph M. Scheidler, Director, 6160 N. Cicero Ave., Chicago, IL 60646,
Office (312) 777-2900 Newsline (312) 777-2525

April 29, 1986

Joseph P. Wall
407 Unruh Avenue
Philadelphia, PA 19111

Dear Joe:

* * *

Joe, you would have loved our action in Pensacola the week of March 25. Joan Andrews was superb and really put the old aborters out of business for a spell.

* * *

Regards,

Joseph M. Scheidler
Executive Director

APPENDIX H

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

[Plaintiffs' Exhibit 726: Article in Pro-Life Action News]
(Excerpts)

* * *

Pro-Life Activists call for Christmas Truce Dec. 28th

In compliance with an agreement made by more than one-hundred pro-life activists at the second National Activist Convention, in April, 1985, PLAN (Pro-Life Action Network) will call for a Christmas Truce on Saturday, December 28th 1985.

This truce will be based on a demand that all abortions cease everywhere on the Feast of the Holy Innocents, Dec. 28th

* * *

Pro-lifers will notify local abortuaries that they should do no abortions on this day (or if abortions are not performed on Saturday, the next nearest date) in compliance with the call for a Day of Amnesty for the Unborn. If they plan to comply with the national program they will indicate this on their telephone with a message saying that abortions will not be performed on Saturday, Dec. 28th.

If they comply, pro-lifers will go to the clinic to make certain no abortions are being performed. If the clinic is in compliance there will be no further action at that time. If, however, the abortuary is open for business, pro-lifers will take whatever non-violent direct action is necessary to stop abortions, including entering the abortuary, sitting in, blocking the entrance or blocking passages leading to the abortion chambers.

* * *

APPENDIX I

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

[Plaintiffs' Exhibit 729: Letter from Joseph M. Scheidler to Administrator, Planned Parenthood on December 20, 1985]

PRO-LIFE ACTION LEAGUE
Joseph M. Scheidler, Director, 6160 N. Cicero Ave., Chicago, IL 60646, Office (312) 777-2900, Newsline (312) 777-2525

December 20, 1985

Administrator
PLANNED PARENTHOOD
17 N. State St.
Chicago, IL 60602

Dear Sir,

During this Holiday Season when people focus on family, children and one another, the grim reality of abortion hovers over the nation like an unholy spector.

In deference to this holy time, while we fully realize that abortion is always a tragedy even to those who support it, the Pro-Life Action Network (PLAN) is asking all doctors, clinics and hospitals nationwide to refrain from performing abortions on Saturday, December 28, the Feast of the Holy Innocents.

We are calling for a Christmas Truce. Even though there is a fundamental difference of thought between the pro-life and pro-abortion camps, we trust that you will agree to halt all abortions for at least one day.

The Pro-Life Action Network trusts that you will respect this "National Day of Amnesty." If you choose to ignore our request we will take note of your decision and will address this problem through non-violent direct action.

During this holy season, for the sake of women and children and all of us, please schedule no abortions for December 28. We will call to confirm your decision. Many throughout the country are complying with this request.

Respectfully in Life,

Joseph M. Scheidler
Executive Director

APPENDIX J

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

[Plaintiffs' Exhibit 801: Joseph M. Scheidler's Typescript for ACTION NEWS]
(Excerpts)

* * *

Action News WED and THURS, Jan. [illegible]

Pro-life Action News for Wednesday and Thursday, January 8 and 9.

* * *

Scheidler has picketed Hern's Clinic twice in recent months and Thursday repeated his threat to close Hern's Clinic. Disruptive activities, he said, are planned for Hern's business. In Ju [sic] when both the National Right to Life Committee and the National Organization for Women will be holding conventions in Denver. "We're going to have a virtual army out there," Scheidler vowed. "I'm not talking about the moder[ate]. I'm talking about the hard core activists for whom the abortion clinic door means nothing. I would suggest strongly that HRN [sic] stay up at his house in the mojntains [sic], or else take a vacation. That's a promise. If he sees it as threat, that's fine."

* * *

APPENDIX K

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

[Trial Testimony Excerpts]

SUSAN HILL
DIRECT EXAMINATION

* * *

[662]

* * *

A. Yes. As I have indicated earlier, I have been working in this field providing abortion services since 1973. In 1985 we started to have actions directed against us that I became alarmed about, and I was concerned about the ramifications of those actions. The first action that alarmed me to a more than normal things that happened with us was an invasion of our Delaware facility by Joan Andrews and 19 other people acting in concert with her.

[663] She entered the facility and – Miss Andrews entered the facility, the people acting with her, the invaders with her forcibly made their way to the back of the clinic and destroyed the medical equipment, chained themselves to medical and operating room tables. Went into the operating rooms while staff and patients were in the operating rooms, tore down the cabinets, threw out medications, destroyed medications that were sitting waiting for patients on the floor and then sat down and started chanting and yelling at the staff and the patients.

* * *

A. * * * Within the next year Mr. Joe Scheidler entered our building in Delaware, stormed up the steps with two or

three other men with him, came in and stormed his way into our administrator's office, said he was there to "case the [664] joint" and told her that she needed to find another job.

* * *

[698]

* * *

A. * * * There was a rescue in July of 1991 that began with, again, rescuers circling the building and coming around to try to get as close to the property as possible. There were police barricades at that point that were put in place to try to keep people off of the private property. A woman had come into the building posing as a patient, had said she was leaving the building to go get something out of her car, and then opened up the door and allowed and let in 23 other rescuers into the building themselves.

They came in and occupied the medical floor of the building. It's on two floors. They occupied it. There were [669] patients in the building as well as staff and physicians. They brought in metal pipes that were attached to 200-pound metal boxes and attached themselves so that it was impossible to pull them apart without using some kind of device that we obviously didn't have in the building itself.

To the best of my recollection, it took about four and a half hours for the police to remove the rescuers that had invaded the clinic, and I believe they had to get something that was like the jaws of life but smaller, which was able to pry open the metal boxes and release the rescuers so that they could be taken off. They resisted arrest and had to be carried off out of the building.

* * *

[725]

* * *

A. I have passed by peaceful picketers in front of our clinics since 1973, many times spoken to peaceful picketers, and actually even brought them food at times. We have obviously with what – the field that I work in, we have always

seen peaceful picketers in front of our different [726] clinics, and I believe that as long as they're peaceful and abide by the law, they should be able to picket peacefully on the sidewalks in front of our buildings.

Q. So you don't have any problems with peaceful picketing at all, do you?

A. No, we have never, ever brought an action against peaceful picketers in any one of our facilities or attempted to stop their ability to picket in front of our facilities.

Q. And, Ms. Hill, did the clinics in your group experience peaceful picketing in the Seventies and early 1980s?

A. Yes. Again, as I said, we had many peaceful picketers from religious groups, clergy and nuns in prayerful picketing. And again, we actually got to know some of them and, again, believe in their right to peacefully picket.

* * *

MS. A.

DIRECT EXAMINATION

* * *

[767]

* * *

A. * * * I had one daughter that was approximately three years old. I suffered two miscarriages, and I was pregnant again. We thought the pregnancy was going really well, and I was about five and a half, six months pregnant when I found out that the baby had hypertrophy of the left ventricle. In my situation, the child didn't have the left side of the heart formed. We were told that I would have to go to this children's hospital where they discovered this and that the baby would be hooked up on machines, and basically it would be a short life of suffering and pain. And personally my husband and I both felt that we couldn't do this to the baby, so we decided to opt for a different procedure.

Q. Were you an advocate of abortion at that time?

A. No, definitely not.

Q. Would you please tell us how you and your husband faced the decision that you had to make at that time?

A. It was a real difficult decision. By the time we went through all the different options, we decided to terminate the pregnancy.

Q. Would your baby have had any chance at all of surviving on its own?

A. No, definitely not.

* * *

[768]

* * *

A. * * * We got there when it was kind of dusk, and we drove by the clinic to see where we were going on our way to the hotel, and there were approximately a group of about 30 people that were in front of a gated area which I now know is the entrance. Some of them were chained to the fence, and other people were sitting directly in front of the gate, and then there were some people that were kind of milling around.

* * *

[770]

* * *

A. The next day, the staff called us and let us know that they were going – they arranged for a bunch of staff supporters and the staff themselves to bring enough cars to hold the people that were there to go to the clinic in, and they were directed to have us actually physically in the cars in front of the clinic before they could actually start arresting the Operation Rescue people and the other people that were there and get them, you know, away from the entrance so that we could gain access to it.

[771]

* * *

A. * * * There were hundreds of people all over the place. When we started to try to drive – excuse me – started

to try and drive up, people were surrounding our cars. They were screaming at us and banging at the windows. Some people were trying to lie down in front of the cars to stop the cars from moving. There were a lot of women and children there. At one point, there was this one lady who was pushing her young boy down in front of our car, trying to get our car to stop. We were terrified, and it was very hostile. The people seemed very mean and angry and we were very [772] scared.

* * *

A. The first person I saw was Randall Terry. He was out kind of in front of the car and away, and he was kind of standing up on something. He had a bullhorn, and he was pointing and directing people. He had a crowd of people around him. He was pointing, and the people were coming and going and, I guess, doing whatever he was telling them to do.

* * *

[775]

* * *

Q. You finally got into the clinic on the third day, is that right?

A. Yes, ma'am.

Q. Okay. By the time you got in, had you had any physical contact with any of the blockaders?

A. On the third day, the federal marshals were called in, and they basically were the people that cleared the area for us to get in. They had a bunch of support people that kind of formed a human chain on both sides to get a little walkway to get us through the gate. I was really concerned about this [776] little girl that was with us, and I had brought along like a sweater or something because I was using that at one point to roll it up in the window so that she wouldn't have to look at a lot of the stuff that was going on. I put it over her, and I was trying to get her through the crowd of people grabbing at us and spitting at us and that sort of thing. At one point, this

lady grabbed my arm really hard, and she said: How could you kill your grandchild?

I finally pulled away from her, and she left a bruise on my arm. Then we finally did make it in.

* * *

MAUREEN BURKE
DIRECT EXAMINATION

* * *

[1006]

* * *

Q. How did you happen to come to be present at the blockade in June 1985?

A. There was a national anti-abortion conference going on in town at that time, and we received word that a clinic in the Washington area would be invaded.

* * *

[1007]

* * *

Q. And what did you see when you arrived?

A. It was all quiet when we arrived, but just a few moments after we did buses began to pull up and people began to pour out of the buses. A couple of people attempted to sort of rush into the clinic, but we were able to prevent them from doing so.

And then and more and more – hundreds – well, over a hundred people I'd say came off the buses and then began blockading the clinic, sort of lining up all in front of it to prevent anyone from getting in or out.

Q. How long was the clinic kept closed by the blockaders?

A. It was several hours.

Q. Where were you personally in relation to the blockaders?

A. I was actually pinned against the clinic. There was [1008] about a six or seven rows of people between me and the clinic all shoving.

Q. Did you say or do anything as you were standing there pinned against the clinic?

A. Yes. Several of us started yelling as loud as we could, please stop pushing. We're going to get hurt.

Q. Did you see any of the defendants participate in that blockade?

A. Yes, I did. I saw Mr. Scheidler there.

* * *

Q. Was Mr. Scheidler there at the blockade throughout the entire time it was in effect?

A. Yes, he was.

Q. And what did you see him doing?

A. He was directing. He had his bullhorn and was sort of pointing out to people where to go.

* * *

CATHY CONNER
DIRECT EXAMINATION

* * *

[1149]

* * *

A. * * * In June of 1985, June 15th, actually to be specific, we had a clinic invasion. 21 people stormed the clinic just after we opened that morning at about 9:00, went into all the rooms, sat down and basically invaded and would not leave.

* * *

[1150]

* * *

Q. Ms. Conner, besides occupying the rooms in the clinic, did the anti-abortion protestors who invaded the clinic do anything else?

A. They took apart surgical equipment. They contaminated surgical instruments that had been sterilized. They contaminated some of the medications that we had in the facility, as well as taking apart of sterile packs.

* * *

[1153]

* * *

Q. And what, if anything, did they say to you when you asked them to leave?

A. They ignored me. They obviously did not leave at that time, just continued to walk through. Mr. Scheidler did at one point say to me that he was there to case the place because it was his intention to close us down and make sure that Delaware became the first abortion-free state in the nation.

[1154] Q. And, Ms. Conner, what was your reaction to that invasion that day?

A. I felt very threatened. I was by myself. These four men walked in. As I said, I had heard about Mr. Scheidler. He's quite a large man, very tall man, very threatening, intimidating. I was frightened.

Q. And did Mr. Scheidler say anything else to you that in any way added to the fear you just expressed?

A. As they were leaving – and there was a stairway that – we were on the second floor, so there was a stairway that you had to go down in order to get out the front door. He was walking down the steps and said to me as he was leaving that I had better find myself a different job because I could be in big trouble.

Q. How did you take that statement?

A. I took it as a threat.

* * *

DIDO HASPER
DIRECT EXAMINATION

* * *

[1386]

* * *

Q. * * * During the blockade, did you see any of your clients try to get into the clinic?

A. Yes, I did. I saw two different clients try to get into the clinic.

Q. Can you describe for the jury what you saw with respect to the first client?

A. Okay. The first client – for the most time, I was out in the street in front, and the first client tried to walk to the [1387] front door through all of the people who were blockading, right through them, make a path to the front door to go in the front door.

Q. What were the Operation Rescue people doing at this point?

A. Well, they were sitting there with their arms and legs sort of entwined, but they started yelling at her, and she was yelling back at them. Then they started grabbing her, actually just grabbing at her, and she ended up falling like right in the middle of them.

Q. What finally happened to her?

A. Police had to walk through the blockaders to be able to pick her up and carry her out.

Q. Did she ever make it into the clinic that day?

A. No, she didn't.

Q. Do you know why she was trying to get into the clinic?

A. Yes, I do. She was one of our fertility clients, and she was ovulating and was trying to get in for her insemination.

Q. Can you tell us about the second woman that you saw trying to get into the clinic through that blockade?

A. The second woman didn't try to get into the clinic. She was a client who had an ongoing health problem, and she had to be seen. The doctor only came once or twice a week to our clinic, and she needed to be seen by our physician. So she asked the police, and this was relatively early in the day. She asked the police to help her go through the side, the [1388] fence or barrier people on the south side of the clinic, and two policemen tried to help escort her through. When they couldn't escort her through, they tried to help her get over, and there were clinic staff on the other side to try to help her get over them.

Q. Were the police able to lift her over the blockaders?

A. No, and it was one of those moments that was very scary, because the police were very intent on trying to get this woman in and the blockaders were very intent on keeping her out. Once again, they grabbed her and pulled her to the ground.

* * *

PENNY BERTSCH
DIRECT EXAMINATION

* * *

[1443]

* * *

Q. What happened next?

A. They were rushing. They were walking very quickly, kind of rushing. And they all came in front of the door in front of us, linked their arms together, smashed together as closely as they could get together and smashed against us [1444] all the way across the sidewalk, which is about 12 feet from the door to the sidewalk and in both directions in front of the building. And they were all together so that no one could get into or out of the clinic from that – from the street.

Q. Were they touching you at this point?

A. Yes, I mean, they rushed. They were like shoving and elbowing and smashing.

* * *

Q. Did you say anything to these people who were smashing up against you?

[1445] A. Yes, You know, I told them you're smashing us. We're smashed. We're scared. Let us out of here, you know.

Q. Did they let you out?

A. No. They – you could hear people talking. Don't pay any attention to them. They're the murderers. They're the baby killers. Whatever happens to them is God's will.

* * *

LINDA TAGGERT

DIRECT EXAMINATION

* * *

[1470]

* * *

Q. Would you please tell the jury what happened after you saw Joe Scheidler with the bullhorn.

A. I was in the sort of foyer of the building and one of – in fact, the president of the local NOW chapter had come inside to talk to me. We had the door locked, and we were talking about what was going on, and she had also had some photographs that she wanted me to see and they were outside. So she started to open the door, and it was yanked away from her and she went flying.

And the first person that I recall coming in the door was Karisa Epperly who knocked me down on the stairs. I hit my head on the stairs. I was standing with my back to the stairs. And unfortunately both Georgia and I got up.

Q. Georgia was the NOW leader?

A. Right.

[1471]

* * *

A. And while I was still down, a couple of other women went by me who I did not know at the time but identified later as Joan Andrews and Sarah Burt. And then John Burt came in the door. He elbowed Georgia very hard. And then when I was in the way, he took his right arm and knocked me into the wall. My ear hit the wall, and my neck went over the banister, and I was down again.

* * *

* * * the C2 and C6 disks were severely damaged.

Did you require any treatment?

A. I had a Thompson collar for several months. I also was in physical therapy for about six months.

* * *

JOHN BURT

(DEPOSITION READ INTO THE RECORD)

DIRECT EXAMINATION

* * *

[1509]

* * *

Q. The next day, when did the demonstration at the Ladies Center begin?

A. Approximately 7:30 or 8:00 o'clock.

* * *

Q. Did you or Joan Andrews or her daughter or Kris Epperly destroy any properly while you were in the Ladies Center?

A. My daughter and Ms. Epperly did. Joannie tried to pull the plug off the suction curettage machine, and they had me handcuffed before I got to the top of the stairs.

Q. And did he" – and this is referring to Joe Scheidler – "say anything when he saw that night in jail along the lines of good job or glad you were able to do it?

A. Yeah, sure, they do. Hey, John, how you doing."

* * *

[1510]

* * *

Q. * * * Did Scheidler say thing to you that night?

A. Patted me on the shoulder, said hey, good job, John.

* * *

THIRD ANONYMOUS WITNESS
DIRECT EXAMINATION

[1514]

* * *

Q. What was the purpose of the surgeries that you had been going through at the time in 1989?

A. We were trying to save my reproductive organs. I had cystic ovaries, so I had a multitude of surgeries, and eventually I had a partial hysterectomy.

* * *

[1515]

* * *

Q. Would you please tell us what your physical condition was on that day, February 11th?

A. I was very weak. I had just major surgery two weeks prior to that day. There was still some slight bleeding. I was medicated, and I was in a lot of pain.

Q. And did you have an appointment to receive some medical care on that day?

A. Yes, I did.

Q. What was your appointment for?

A. My appointment was after the surgery follow-up. The doctors needed to check the incision and to check for bleeding and drainage.

Q. Where were you going to go for your appointment that day?

A. At the medical – the Women's Medical Center – Women's Medical Clinic in Los Angeles.

* * *

[1518]

* * *

Q. What happened as you were leaning against the car there in the parking lot by the clinic?

A. All of a sudden, a crowd of people came running from both sides of the building toward the parking lot, toward us. I didn't know who they were or what they wanted. They just rushed up on us so fast. I noticed that some of the people were carrying posters, at least I thought they were posters, and they were carrying signs and were shouting things at us. They were shouting "murderer, baby murderer."

I remember a gentleman walked up to me and Pops and asked was I going in the clinic, and I was shaking my head yes, and Pops was telling him that I was sick. Then another [1519] gentleman that was three or four people behind the first gentlemen yelled, "Nobody's going to get in this clinic, not today."

Then right about that time, somebody grabbed me by the back of my hair, and I fell up against the car. Then I just saw all of those people, and they were grabbing arms and grabbing at me. I didn't know what was happening, and I was yelling for Pops to help me. Then Pops was pushing the people away, and they were fighting Pops.

I was trying to move, but I was in between the open door. Then I remember rolling down the side of the car, and the people were hitting me. Then I remember looking up to call out to ask God to help me. As I looked up and yelled "Oh, God help me," a man hit me in the head with a big old sign. It was at this point that I grabbed Pops' arm and Pops grabbed me, and I put my arms around Pops' waist. Then Pops was pushing the people away, and they were still grabbing and pulling at me.

Then I felt myself going down, and I got scared, real scared. It was just so many people, and they were fighting and grabbing at me, and they were yelling things like "murderer." I wondered: Who did I kill? Who did I hurt?

As I remember going down, Pops grabbed me by my waist, and the last thing I remember I just saw feet. Then I passed out.

* * *

LT. CARL PRYDUM
DIRECT EXAMINATION

* * *

[1573]

* * *

Q. What's your present occupation, sir?

A. Police officer, City of Atlanta.

Q. And what's your rank?

A. Lieutenant.

* * *

[1575]

* * *

Q. And when you use the word "blockade," sir, could you describe to the ladies and gentlemen of the jury briefly what you mean by "blockade"?

A. Large groups of people coming to the clinic sites, entering onto the property, using their bodies to block the doors, the driveways, access to the property. They use a variety of means, interlocking their bodies together, and from [1576] time to time we saw the use of vehicles to block vehicular access.

* * *

Q. Turning your attention back to the blockades, do you know what group was responsible for the blockades?

A. Operation Rescue.

* * *

[1596]

* * *

Q. I think I asked you to turn your attention, sir, to August 15, 1988. Can you tell us what happened that day.

A. Well, on that day, there was a protest at the Feminist Women's Center over on 14th Street, and a number of persons had appeared again from Operation Rescue and started blocking access to the property. I gave them formal official notice, which they refused to adhere to. Then as employees and patients were attempting to enter the property, myself and the other supervisor on the scene determined a point in their line that we were going to break, and we told both individuals at that time: Either unlock your arms or we're going to unlock them for you.

[1597] Then we successfully unlocked their arms, and we created a space between myself and the other sergeant for people to pass between. In the process of doing that, I had my back turned to a gentleman who was later identified to me as Mr. Metcalf, and Mr. Metcalf in a very forceful manner, after I had dislodged him and created this space, in a very forceful manner he struck me in the back of my rib cage with his elbow.

* * *

TIMOTHY MURPHY
DIRECT EXAMINATION

* * *

[2316]

* * *

Q. Now, the cement block was placed in such a way that the Park Med Clinic door could not be opened, correct?

A. That is correct.

* * *

Q. That's another shot of you locked in front of the Park Med door so nobody could get in?

A. That's correct, yes.

* * *

[2333]

* * *

Q. And you wrote this article, correct?

A. I did.

Q. The facts in your article are accurate?

A. Yes, they are –

* * *

A. * * * By Tim Murphy. Pro-Life Action League. "The first major rescue following the election of Bill Clinton took place Saturday, November 7, in Chicago, targeting the Albany Medical [2334] Surgical Center."

* * *

A. "108 rescuers were arrested after successfully shutting down Albany for over two and a half hours."

"Later in the morning a lock and block team struck at Central Medical Pan-Americano, a doctor's office where abortions are performed, closing it for the entire day."

* * *

A. "Over 200 pro-life college students from a number of colleges took part with 25 being arrested for the first time."

* * *

"Arriving at 5:45 a.m. the rescuers and prayer supporters exited the vehicles and took up positions in front of the three [2335] doors and at the front sidewalk and rear driveway entrances to the parking lot."

"Rescuers Tim Gilliam and Randy Means locked themselves together by inserting their arms in a long pipe positioned between two fence posts adjacent to the driveway. Four other rescuers with four to five kryptonite locks attached themselves to each other by their ankles and stretched out across the driveway with one man connected to Gilliam. A line of rescuers stood in front and behind them to ensure their protection.

"Only three escorts and a security guard were inside the parking lot when the rescuers arrived, catching police and abortion advocates completely off guard. The guard had parked his van inside the parking lot at the door blocking the main entrance to the building. Immediately Bob Rothlisberger and another pro-lifer locked themselves to the underside of the van by a pole similar to the one used by Gilliam and Means.

"Soon a squad car arrived and a policewoman unsuccessfully attempted to push her way through the pro-lifers blocking the driveway."

Q. Then on the next page, sir.

A. "City workers and police set up barricades on either side of the front door gates and across the street to contain the crowd forming there. Meanwhile the pro-lifers continued to block the driveway and parking lot even after being forced away [2336] from the front door, denying Albany the use of their parking lot."

* * *

A. "The Chicago Fire Department was called and used torches to cut up Albany's fence to remove Gilliam and Means. The fortified kryptonite locks were cut off rescuers by firemen using the jaws of life.

* * *

JOSEPH SCHEIDLER
CROSS EXAMINATION

* * *

[3940]

* * *

Q. Going on with your book, turning to page 144, you recommend [3941] right here in your book blocking the procedure rooms, don't you?

A. Yes. That was one way.

* * *

Q. You say when you block the procedure room, that's not forceful?

A. No. Sitting down is not forcible.

Q. When you prevent people from coming in?

A. Yes.

Q. You also recommend lock and blocks. If you turn to the previous page, 142 and 143, you've recommended that tactic right here in your book?

A. Yes. It's very effective.

* * *

Q. You consider lock and blocks aren't forcible either?

A. No.

* * *

[4001]

* * *

Q. And in this letter you wrote to another supporter, thanking that individual for sending photographs of "our gang" in front of what you call the bombed out abortuary, and then you say "great scene." Those are your words, aren't they, Mr. Scheidler?

A. Yes, I wrote those. In context they're true.

Q. And the supporter who wrote the letter to you attaching those photographs referred to the picture in the photographs as – can you read it here – "the freshly gutted clinic." Do you see that?

A. Yes

Q. That was his expression, right?

A. Yes, that was his expression.

[4006]

* * *

Q. One of the things that was agreed to at this meeting was to call the group PLAN, Pro-Life Action Network, right?

A. Yes, We've been through that.

Q. Okay. And another thing that was agreed to was to create a year of pain and fear for the abortion industry; isn't that right?

A. That was on a press release that was put out, yes.

* * *

[4007]

* * *

Q. Now, another thing that was talked about at this PLAN meeting was whether or not to tell clinics at Christmastime to close or be closed, right?

A. It was an amnesty, yes.

Q. In fact, this was agreed to by the people at the PLAN meeting; isn't that a fact, Mr. Scheidler?

A. I believe that was.

Q. And you called it the Christmas truce, right?

A. That's right.

Q. And you talked about how each person was supposed to go back to their own communities and tell the clinics that provided medical services that included abortion that they [4008] should either close or they would be closed by whatever what you call nonviolent direct action was necessary, including sit-ins, blocking the entrance or blocking passages to the procedure rooms, right?

A. That well could be.

* * *

Q. * * * And then you talk about how if they don't voluntarily close further action will be taken, including entering the clinic, sitting in, blocking the entrance of blocking passages, right?

A. Yes.

* * *

[4009]

* * *

Q. And in furtherance of that agreement your league, your Pro-Life Action League actually sent out letters to every single clinic in the Chicago area that provided abortions, right?

A. We tried to.

* * *

Q. And they essentially tell you that – and let's put one on the ELMO here – that PLAN, the Pro-Life Action Network is asking all doctors, clinics, et cetera, to refrain from abortions on that day. It's called a Christmas truce. And it says here, "The Pro-Life Action Network trusts you will respect this, and if you choose to ignore our request, we will take note of your decision and will address this problem through nonviolent direct action." You wrote that, right?

A. Yes.

Q. And, of course, the nonviolent direction action you're talking about is blocking the entrances or sitting in or [4010] blocking the procedure rooms as you referred to in the earlier document, right?

A. Yes.

* * *

[4012] Q. * * * On direct examination you talked about the incident in Pensacola in March of 1986. Do you recall that?

A. Yes.

Q. You went down there at the invitation of John Burt, right?

A. Yes.

* * *

[4021]

* * *

Q. And, in fact, on direct examination I believe that you said that Joan Andrews had reminisced about some of the things she did, is that right?

A. Yes.

Q. And, in fact, one of the things she reminisced about was how she had dismantled suction machines in other clinics before this occasion, right?

A. Something to that effect, yes.

[4022]

* * *

Q. And you actually saw Joan Andrews and John Burt enter the clinic, didn't you, Mr. Scheidler?

A. I believe I did. It was really fast.

* * *

Q. And when you visited them in jail, they told you that they had trashed the clinic, didn't they?

A. I believe that's when it came out.

* * *

[4121]

* * *

Q. * * * [F]ocusing on this incident at the Lake Forest Oasis in 1991, Matt Trewhella's group surrounded the doctor's car and wouldn't let it go, right?

[4122] A. I think that's how they did it.

Q. And it took about – there were about 30 or 40 protesters in that group that were surrounding the car, correct?

A. Well, surrounding it, I don't think there were that many, but there were about that many there.

Q. And this group prevented the doctor from getting into his car for a good hour, isn't that right?

A I think it was an hour, yes.

Q. And you applauded that tactic and said you'd probably made it a new chapter in the next edition of your book, didn't you?

A. I remember saying that.

* * *

JOSEPH SCHEIDLER
RE-CROSS EXAMINATION

* * *

[4256]

* * *

Q. Dobbs Ferry 1991, you were there during those rescues, weren't you?

A. Yes.

Q. Clinics were closed forcibly, weren't they?

A. Yes.

* * *